TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1[redacted] 1917

No. [redacted]94

THE UNITED STATES, APPELLANT,

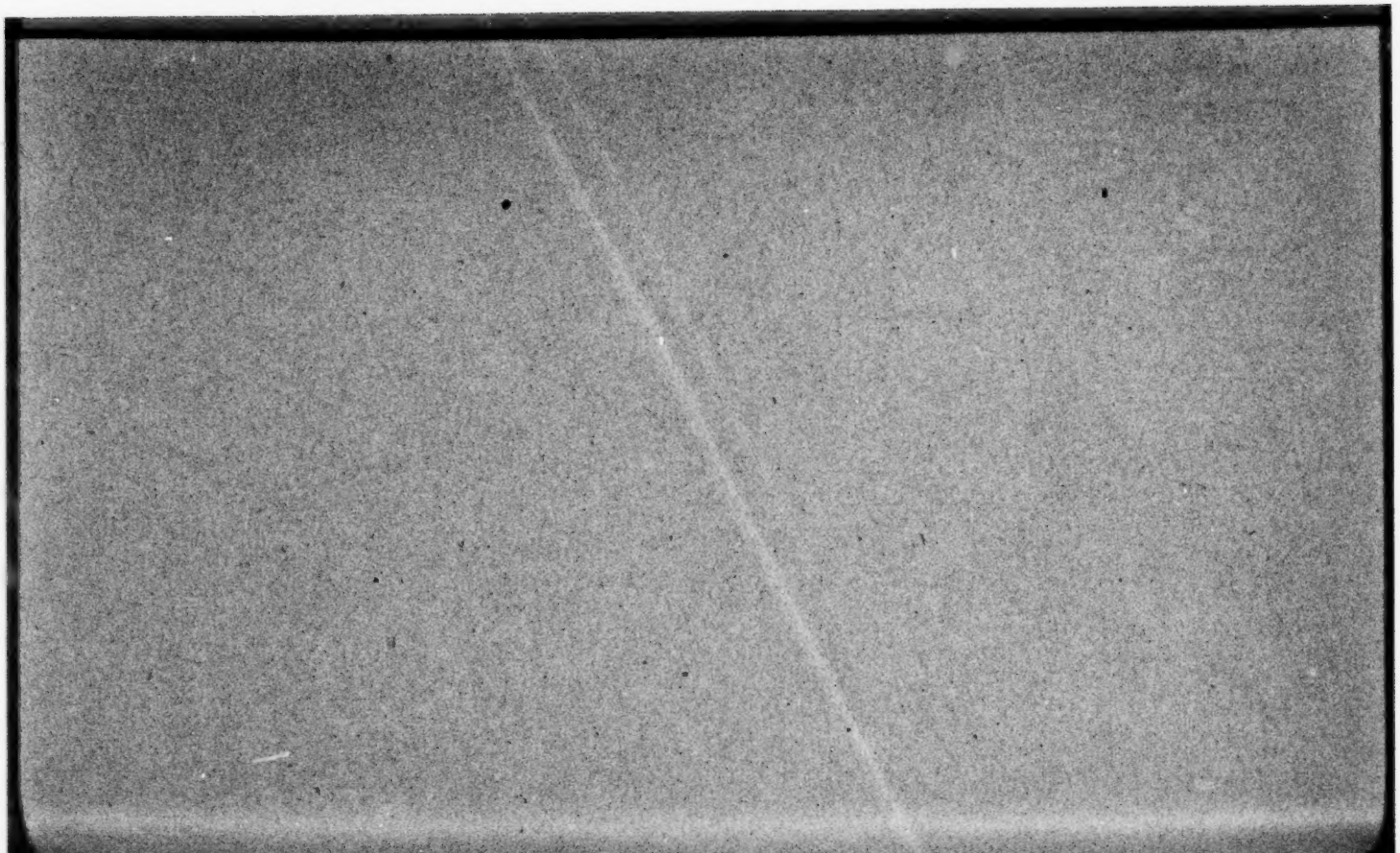
vs.

J. S. STEARNS LUMBER COMPANY.

APPEAL FROM THE DISTRICT COURT OF UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

FILED JANUARY 25, 1918.

(25112)



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 366.

THE UNITED STATES, APPELLANT,

vs.

J. S. STEARNS LUMBER COMPANY.

APPEAL FROM THE DISTRICT COURT OF UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

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1 Transcript of Record. In the District Court of the United States for the Western District of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANT, *v.* J. S. STEARNS LUMBER COMPANY, DEFENDANT.	In Equity. No. 28–B.

C. C. Daniels, special assistant to the Attorney General; August C. Hoppmann, assistant United States attorney, solicitors for complainant.

W. W. Gurley, Olin, Butler & Curkeet, solicitors for defendant.

2 In the District Court of the United States for the Western District of Wisconsin.

At the term of the District Court of the United States of America for the Western District of Wisconsin, begun and held at the city of Madison, in said district, on Monday, July 26, A. D. 1915. Sanborn, Judge.

Among other, the following proceedings were had, to wit:

UNITED STATES OF AMERICA, COMPLAINANT, *v.* J. S. STEARNS LUMBER COMPANY, DEFENDANT.	In Equity. No. 28–B.

Be it remembered, that heretofore—to wit, on the 31st day of January, in the year of our Lord one thousand nine hundred and thirteen—came the said George W. Wickersham, Attorney General of the United States, and George H. Gordon, United States attorney for the Western District of Wisconsin, its solicitors, and filed in the office of the clerk of the District Court of the United States for the Western District of Wisconsin its bill of complaint as follows, to wit:

3 District Court of the United States of America for the Western District of Wisconsin.

THE UNITED STATES OF AMERICA, COMPLAINANT, *v.* J. S. STEARNS LUMBER COMPANY (A CORPORATION), defendant.	

To the Honorable the Judges of the District Court of the United States in and for the Western District of Wisconsin:

The United States of America, by its Attorney General, and by its attorney in and for the Western District of Wisconsin, brings this, its bill of complaint, against the J. S. Stearns Lumber Com-

pany, a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, and a resident of the county of Ashland, in the State of Wisconsin, and said Western District of Wisconsin.

Thereupon your orators complain and say:

1. That prior to the 28th day of March, 1843, all of the premises and real estate hereinafter described were within that part of the United States known and called "Indian country," and belonged to the Chippewa Indians of Lake Superior and the Mississippi, and that on said 28th day of March, 1843, by a treaty between the United States and the said Chippewa Indians of Lake Superior and the Mississippi, the said Chippewa Indians ceded to the United
4 States all of the country within the following boundaries: "Beginning at the mouth of Chocolate River of Lake Superior; thence northwardly across said lake to intersect the boundary line between the United States and the Province of Canada; thence up said Lake Superior to the mouth of the St. Louis or Fond du lac River, (including all of the islands in said lake); thence up said river to the American Fur Company's trading post, at the southwardly bend thereof, about twenty-two miles from its mouth; thence south to intersect the line of the treaty of 29th July, 1837, with the Chippewas of the Mississippi; thence along said line to its southeastwardly extremity, near the Plover portage on the Wisconsin River; thence northeastwardly, along the boundary line, between the Chippewas and Menomonees, to its eastern termination, established by the treaty held with the Chippewas, Menomonees, and Winnebagoes, at Butte des Morts, August 11, 1827), on the Skonawby River of Green Bay; thence northwardly to the source of Chocolate River; thence down said river to its mouth, the place of beginning; it being the intention of the parties to this treaty to include in this cession all the Chippewa lands eastwardly of the aforesaid line running from the American Fur Company's trading post, on the Fond du Lac River, to the intersection of the line of the treaty made with the Chippewas of the Mississippi, July 29, 1937."

That by articles two and three of said treaty, it was provided:

Article 2. The Indians stipulate for the right of hunting on the ceded territory, with the other usual privileges of occupancy, until required to remove by the President of the United States, and that the laws of the United States shall be continued in force, in respect to their trade and intercourse with the whites, until otherwise ordered by Congress.

Article 3. It is agreed by the parties to this treaty, that whenever the Indians shall be required to remove from the ceded
5 district, all the unceded lands belonging to the Indians of Fond du Lac, Sandy Lake, and Mississippi Bands shall be the common property and home of all the Indians, party to this treaty.

II.

That on the 6th day of August, 1846, by an act of Congress, the people of the Territory of Wisconsin were authorized to form a constitution and State government for the purpose of being admitted into the Union on an equal footing with the original States in all respects whatsoever by the name of the State of Wisconsin; the boundaries of the territory to comprise said State being set forth in said act of Congress, and which boundaries included the territory ceded to the United States by the said Chippewa Indians of Lake Superior and the Mississippi by the said treaty of March 28, 1843.

That in and by section 7 of said act of Congress, authorizing the people in the Territory of Wisconsin to form a constitution and State government, it was provided as follows:

"That the following propositions are hereby submitted to the convention which will assemble for the purpose of forming a constitution for the State of Wisconsin for acceptance or rejection, and if accepted by said convention and ratified by an article in said constitution they shall be obligatory upon the United States:

"First. That section numbered sixteen in every township of the public lands in said State, and where such section has been sold or otherwise disposed of other land equivalent thereto and as contiguous as may be, shall be granted to said State for the use of schools."

That thereafter, and on the first day of February, 1848, the people of the Territory of Wisconsin did duly accept the conditions
6 prescribed by said enabling act of 1846, and by an act of Congress approved May 29, 1848, said territory was admitted to be one of the United States of America.

III.

Your orators further allege that on the 30th day of September, 1854, the Chippewa Indians of Lake Superior and the Mississippi entered into another treaty with the United States, which said treaty was proclaimed on the 29th day of January, 1855, wherein and whereby the said Indians ceded to the United States certain other territory in the Indian country situated in the State of Wisconsin and elsewhere, and in and by said treaty, and in consideration thereof, provision was made for the formation of permanent reservations for the use, enjoyment, and benefit of said Indians, each of which said reservations, it was therein provided, should embrace certain tracts of land, the boundaries thereof to be established by actual survey by the said United States

That thereafter, and pursuant to the terms of the treaty made and concluded September 30, 1854, between the United States and the Chippewa Indians of Lake Superior and the Mississippi, and which treaty was proclaimed January 29, 1855, the United States defined the boundaries of the tracts set apart and withheld the same from sale, and that the premises and real estate hereinafter described are

a part and parcel of the land ceded to the United States by said treaty of March 28, 1843, and which were set apart pursuant to the treaty of September 30, 1854, for the use of the La Pointe Band of said Chippewa Indians.

That the lands so withheld for the use of said La Pointe or Bad River Indian Reservation, were not surveyed on the date of the admission of the State of Wisconsin into the Union, nor were the
7 sections numbered or ascertained, but said lands were in fact surveyed long after the date of the admission of said State into the Union; and that said Indians have not been required to surrender the right of possession and occupancy given them by the treaty of October 4, 1842, proclaimed March 28, 1843, but in fact they are still in possession of said lands comprising the La Pointe or Bad River Indian Reservation.

IV.

Your orators further show that thereafter, and in pursuance of the treaty concluded September 30, 1854, the Secretary of the Interior of the United States deposited in the General Land Office of the United States an order bearing date June 22, 1907, accompanied by a schedule with return dated June 21, 1907, from the Office of Indian Affairs, containing a list of selections of lands for certain Indians residing on the Bad River or La Pointe Reservation, and that on the 26th day of June, 1907, the President of the United States, in accordance with the provisions of article 3 of said treaty, approved the selection of William Ashman, Charles Ashman, Frank Fisk, Mary Sero, Nancy Headflyer, Ambrose Robideaux, and Joseph Connors, senior, and thereafter, and on the 16th day of December, in the year of our Lord one thousand nine hundred and seven, the United States patented to

William Ashman, the north one-half of the southwest quarter of section number sixteen, in township number forty-six north, of range two west: to

Charles Ashman, the north one-half of the northwest quarter of section number sixteen, in township number forty-six north, of range two west; to

Frank Fisk, the north one-half of the northeast quarter of
8 section number sixteen, in township number forty-six north, of range two west: to

Mary Sero, the east one-half of the southwest quarter of section number sixteen, in township number forty-seven north, of range two west; to

Nancy Headflyer, the west one-half of the northwest quarter of section number sixteen, in township number forty-seven north, of range two west; to

Ambrose Robideaux, the north one-half of the southwest quarter of section number sixteen, in township number forty-six north, of range three west; to

Joseph Connors, senior, the southeast quarter of the northeast quarter, and the northeast quarter of the southeast quarter, of section number sixteen, in township number forty-six north, of range number three west; all of which said land is situated in the county of Ashland, in the said State of Wisconsin.

That in pursuance to the laws of the United States and the aforesaid treaties, it was expressly stipulated in each of said patents that the person to whom the same was issued, and his heirs, should not sell, lease, or in any manner alienate said lands, or any part thereof, without the consent of the President of the United States, and that the President of the United States has never consented to the sale, lease, or alienation of said lands, or any part thereof, so patented on the said 16th day of December, 1907, to said William Ashman, Charles Ashman, Frank Fisk, Mary Sero, Nancy Headflyer, Ambrose Robideaux, and Joseph Connors, senior.

V.

Your orators further show that the State of Wisconsin,
9 pretending to be the owner of the premises and real estate hereinbefore described, and which was patented as aforesaid by the United States to the said William Ashman, Charles Ashman, Frank Fisk, Mary Sero, Nancy Headflyer, Ambrose Robideaux, and Joseph Connors, senior, did duly make, execute, and deliver—

On the 15th day of July, 1887, to John McGuigan a patent pretending to convey the north one-half of the southwest quarter and the north one-half of the northwest quarter, and the north one-half of the northeast quarter of section number sixteen, in township number forty-six north, of range number two west, situated in the county of Ashland and State of Wisconsin, which said patent was recorded on December 5, 1887, in book 23 of deeds, on page 266, in the office of the register of deeds in and for the county of Ashland, Wisconsin, being the same land which was conveyed by the United States of America by the aforesaid patents dated December 16, 1907, to William Ashman, Charles Ashman, and Frank Fisk.

On the 3d day of June, 1882, to Henry W. Lamberton, a patent pretending to convey the east one-half of the southwest quarter of section number sixteen, in township number forty-seven north, of range number two west, situated in the county of Ashland and State of Wisconsin, which said patent was recorded on June 19, 1899, in book 14 of deeds, on page 476, in the office of the register of deeds in and for the county of Ashland, Wisconsin, being the same land which was conveyed by the United States of America by the aforesaid patent dated December 16, 1907, to Mary Sero.

On the 2d day of December, 1881, to Philetus Sawyer, a patent
10 pretending to convey the west one-half of the northwest quarter of section number sixteen, in township number forty-seven north, range number two west, situated in the county of Ashland and State of Wisconsin, which said patent was recorded on October 15, 1885, in book 14 of deeds, on page 451, in the office

of the register of deeds for Ashland County, Wisconsin, being the same land which was conveyed by the United States of America by the aforesaid patent dated December 16, 1907, to Nancy Headflyer.

On the 25th day of May, 1887, to John McGuigan, jr., a patent pretending to convey the northwest quarter of the southwest quarter and the northeast quarter of the southeast quarter, and the southeast quarter of the northeast quarter of section number sixteen, in township number forty-six north, of range three west, situated in the county of Ashland and State of Wisconsin, which said patent was recorded on June 14, 1887, in book 28 of deed, on page 325, in the office of the register of deeds in and for the county of Ashland, Wisconsin, being the same land which was conveyed by the United States of America by the aforesaid patents dated December 16, 1907, to Ambrose Robideaux and Joseph Connors, senior.

That the defendant, the J. S. Stearns Lumber Company, now claims to be the owner in fee of all the said real estate conveyed by the patents aforesaid by the United States of America to said William Ashman, Charles Ashman, Frank Fisk, Mary Sero, Nancy Headflyer, Ambrose Robideaux and Joseph Connors, senior, basing its title upon the aforesaid patents made, executed, and delivered by the State of Wisconsin to John McGuigan, Henry W. Lamberton, Philetus Sawyer, and John McGuigan, jr., and by virtue of said patents has entered into the possession of said premises and has cut and removed large quantities of timber therefrom and has prevented the said William Ashman, Charles Ashman, Frank
11 Fisk, Mary Sero, Nancy Headflyer, Ambrose Robideaux, and Joseph Connors, senior, from entering and taking possession of said property and is interfering with and continues to interfere with the use and enjoyment of said property by the said William Ashman, Charles Ashman, Frank Fisk, Mary Sero, Nancy Headflyer, Ambrose Robideaux, and Joseph Connors, senior, and thereby has cast a cloud upon the title of the said William Ashman, Charles Ashman, Frank Fisk, Mary Sero, Nancy Headflyer, Ambrose Robideaux, and Joseph Connors, senior.

VI.

Your orators further allege that said William Ashman, Charles Ashman, Frank Fisk, Mary Sero, Nancy Headflyer, Ambrose Robideaux, and Joseph Connors, senior, were on the 16th day of December, 1907, the date of the issuance of the said patents by the United States of America, have since continued to be, and now are members of the Chippewa Tribe of Indians and wards of the Government, under the charge of an Indian superintendent or agent of the United States, and residing upon the Bad River or La Pointe Reservation, in Ashland county, in the State of Wisconsin, and that each of said patents, as soon as the same was issued, was transmitted to the Indian agent in charge of the said La Pointe Agency for delivery to said William Ashman, Charles Ashman, Frank Fisk, Mary Sero, Nancy Headflyer, Ambrose Robideaux, and Joseph Connors,

senior, and by said agent delivered to said patentees, and that they now are and at all times since the date of said patents have been the owners of the lands therein described.

That by reason of its duties and obligations the Government is charged with the duty of protecting in the courts the rights of the said Indians to whom said patents were issued by the United
12 States, and that in the performance of these obligations and duties, it is necessary to seek the aid of this court, to the end that the defendant should not only be ousted from the possession of said lands but that the court should order that several patents issued by the State of Wisconsin, and any deeds, instruements, or writings in any way affecting the title to said lands be surrendered and delivered up for cancellation and set aside and held for naught.

Wherefore your orators pray that the said patents issued as aforesaid by the State of Wisconsin be set aside, annulled, and held for naught, and that the same be surrendered up and cancelled, and also that all deeds, instruements and writings which in any way affect the title to the premises and real estate hereinbefore described to be set aside and cancelled, and that said defendant be restrained and enjoined from setting up and claiming any right, title, or interest in and to the said premises and real estate described in said patents issued by the State of Wisconsin, as aforesaid, and that the cloud arising therefrom on the title of the said William Ashman, Charles Ashman, Frank Fisk, Mary Sero, Nancy Headflyer, Ambrose Robideaux, and Joseph Connors, senior, may be removed, and that the title to said lands be held and decreed to be in said William Ashman, Charles Ashman, Frank Fisk, Mary Sero, Nancy Headflyer, Ambrose Robideaux, and Joseph Connors, senior, as described in the respective patents issued to them by the said United States, subject to the terms, conditions, and limitations contained in the aforesaid treaties and said patents by the United States.

Inasmuch as your orators can have no adequate relief except in this court, and to the end, therefore, that the defendant may, if it can, show why your orators should not have the relief herein
13 prayed, and full, true, and perfect answer made to the matters herein stated and charged, but not under oath, an answer under oath being hereby expressly waived, your orators pray that your honors grant unto your orators a writ of subpœna directed to the said defendant, the said J. S. Stearns Lumber Company, commanding it on a day certain to appear and answer this bill of complaint, and to abide and perform such orders and decree in the premises as to the court may seem proper and required by the principles of equity and good conscience.

GEORGE W. WICKERSHAM,
Attorney General of the United States.
GEORGE H. GORDON,
Attorney of the United States of America,
for the Western District of Wisconsin,
Solicitors and of Counsel for Complainants.

Indorsed: Original. No. 28 B. Civil Docket. In the District Court of the United States for the Western District of Wisconsin. The United States of America, complainant, vs. J. S. Stearns Lumber Company (a corporation), defendant. Bill of Complaint. Filed Jan. 31, 1913. F. W. Oakley, Clerk. George W. Wickersham, Attorney General of the United States. George H. Gordon, United States Attorney, Western District of Wisconsin.

14 Afterwards—to wit, January 31, 1913—issued subpœna as follows:

15 THE UNITED STATES OF AMERICA,
Western District of Wisconsin, ss.

The President of the United States of America, To J. S. Stearns Lumber Company, a corporation, greeting:

You are hereby commanded that you personally appear before the judges of the District Court of the United States of America for the Western District of Wisconsin in our Court of Chancery in and for the district aforesaid on the first Monday of March, 1913, next ensuing, at Madison, to answer to a bill of complaint exhibited against you in our said court by the United States of America, and to do further and receive what our said court shall have considered in that behalf, and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said J. S. Stearns Lumber Company, a corporation, if to be found in his district, and due return thereof make.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, at the city of Madison in the said district, this 31st day of January, in the year of our Lord one thousand nine hundred and thirteen, and of our Independence the one hundred and thirty-seventh.

[L. S.] F. W. OAKLEY, *Clerk*.

It is ordered by our said court that the said J. S. Stearns Lumber Company, a corporation, the defendant aforesaid, do enter its appearance in this suit, in the clerk's office, on or before the day and time at which this subpœna is returnable, as aforesaid; otherwise the bill may be taken as confessed.

[L. S.] F. W. OAKLEY, *Clerk*.

16 Afterwards said subpœna was returned served, as follows:

UNITED STATES OF AMERICA,
Western District of Wisconsin, ss:

I hereby certify and return that on the 7th day of February, A. D. 1913, at Odanah, Ashland County, I served on the within-named J. S. Stearns Lumber Company, a corporation, by showing J. P. Wing, superintendent of the J. S. Stearns Lumber Company,

a corporation, this chancery subpœna, and by delivering to and leaving with him personally a true copy thereof.

R. J. FLINT, *U. S. Marshal.*
By W. T. PUGH, *Deputy.*

Endorsed: Original. Civil Docket B. No. 28. The United States of America, complainant, vs. J. S. Stearns Lumber Company, a corporation, defendant. Subpœna. Filed Feb. 10, 1913. F. W. Oakley, Clerk.

17 Afterwards—to wit, Mar. 3, 1913—filed appearance of defendant, as follows:

UNITED STATES OF AMERICA,
Western District of Wisconsin, ss:

In the District Court of the United States for the Western District of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANT,
v.
J. S. STEARNS LUMBER COMPANY, DEFENDANT. } No. 28 B.

I hereby enter the appearance of J. S. Stearns Lumber Company in the above-entitled cause and my appearance as its solicitor.

W. W. GURLEY.

Endorsed: No. 28 B. In the District Court of the United States for the Western District of Wisconsin. United States of America, complainant, vs. J. S. Stearns Lumber Co., defendant. Appearance of deft. Filed Mar. 3, 1913. F. W. Oakley, clerk. W. W. Gurley, Marquette Building, Chicago, Ill., solr. for deft.

18 Afterwards—to wit, March 15, 1913—filed answer of defendant as follows:

In the District Court of the United States of America for the Western District of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANT,
v.
J. S. STEARNS LUMBER COMPANY, A CORPORATION, DEFENDANT.

Answer of J. S. Stearns Lumber Company, defendant, to the bill of complaint filed in the above-entitled cause on January 31, 1913.

Answering the bill of complaint herein the defendant, J. S. Stearns Lumber Company, says:

I.

The defendant is without knowledge of the averments in division I of the bill of complaint.

II.

The defendant specifically admits the averments in division II of the bill of complaint.

III.

The defendant specifically admits the averments in the first paragraph of division III of the bill of complaint to the effect that on the 30th day of September, 1854, a treaty was entered into between the United States and the Chippewa Indians of Lake Superior and the Mississippi wherein and whereby the said Indians ceded to the United States certain territory in the Indian country situated
19 in the State of Wisconsin, and that in and by said treaty provision was made for the formation of permanent reservations for the use, enjoyment, and benefit of said Indians, each of the said reservations it was therein provided should embrace certain tracts of land, the boundaries thereof to be established by actual survey by the United States. But this defendant denies that this treaty did or could in any wise affect the title of the State of Wisconsin in and to the sections numbered 16 in every township of the public lands in said State as vested in said State under and by virtue of the acts of Congress of the United States, whereby the said State of Wisconsin became one of the United States of America, being the acts mentioned in division II of the bill of complaint.

This defendant specifically admits that after the making of said treaty the United States defined the boundaries of the tract set apart and withheld the same from sale and that the premises and real estate described in the bill of complaint are included within the land ceded to the United States by said treaty of March 28, 1843. But this defendant denies that the United States had any right, power, or authority to so fix said boundaries of the tracts so set apart and withheld from sale as to include the tracts of land described in the bill of complaint and to which by virtue of patents from the State of Wisconsin and certain mesne conveyances title is now vested in fee simple in the defendant, said property being particularly described in divisions IV and V of said bill of complaint.

This defendant is without knowledge of the averments contained in the third paragraph of division III of the bill of complaint to the effect that the land so averred to be withheld for the use of said La Pointe and Bad River Indian Reservations were not surveyed on the date of admission of said State of Wisconsin into the
20 Union, and to the effect that at said time the sections were not numbered or ascertained, but that said lands were in fact surveyed long after the date of the admission of said State into the Union.

Further answering the said third paragraph of division III of the bill of complaint this defendant denies that said Indians have any right of possession or occupancy given them by the treaty of October

4, 1842, proclaimed March 28, 1843, as against the State of Wisconsin, its patentees and the grantees of said patentees, including the defendant; and further denies that said Indians are still in possession of the lands particularly described in said bill of complaint, title to which is claimed by the defendant to be vested in it in fee and which are in said bill alleged to be included in the lands comprising the La Pointe or Bad River Indian Reservations.

IV.

This defendant avers that it is without knowledge of the averments of the complainant contained in division IV of the bill of complaint, all of which averments relate to the selection of and allotment to certain particularly named Indians of the lands in said division IV particularly described, and to the stipulation alleged to be contained in said patents and with reference to the action of the President of the United States upon such stipulation if such stipulation existed or exists.

V.

Further answering, this defendant admits that the State of Wisconsin made, executed, and delivered to the respective parties and on the respective dates in division V of said bill of complaint mentioned patents to the respective portion of land in the county of Ashland, Wisconsin, mentioned and described in division V of
21 said bill of complaint, and that said respective parcels of land are the same parcels of land which are alleged by complainant to have been conveyed by the United States on the respective dates and to the respective parties in said division V of the bill of complaint mentioned.

Further answering said division V, this defendant admits that it, the J. S. Stearns Lumber Company, now claims to be the owner in fee of all of said real estate so alleged to have been conveyed by patents by the said United States of America to William Ashman, Charles Ashman, Frank Fisk, Mary Sero, Nancy Headflyer, Ambrose Robideaux and Joseph Connors, sr., and that this defendant bases its title to said real estate upon patents made, executed, and delivered by the State of Wisconsin to John McGuigan, Henry W. Lamberton, Philetus Sawyer, and John McGuigan, jr., and upon certain conveyances from the subsequent owners thereof now appearing of record in the county of Ashland, Wisconsin, showing a complete chain of title in fee simple to said land and each and every parcel thereof from the original patentees of the State of Wisconsin to this defendant.

Further answering said division V of the bill of complaint, this defendant admits that it has entered into the possession of said premises and has cut and removed timber therefrom, but this defendant denies that it has prevented or now prevents said William Ash-

man, Charles Ashman, Frank Fisk, Mary Sero, Nancy Headflyer, Ambrose Robideaux and Joseph Connors, sr., or any of them, from entering and taking possession of said property, or that it has interfered with or continues to interfere with the use and enjoyment of said property by said last-named persons, or any of them, or that it has cast a cloud upon the title of said last-named persons, or any of them, and it denies that said persons or any of them have
22 the title claimed in said bill of complaint or any title whatever in said lands.

VI.

This defendant is without knowledge of the averments contained in the first paragraph of division VI of the bill of complaint, except that this defendant specifically denies that said William Ashman, Charles Ashman, Frank Fisk, Mary Sero, Nancy Headflyer, Ambrose Robideaux, and Joseph Connors, sr., or any of them, now are or is or at any time since the dates of the alleged patents from the United States have or has been the owner or owners of such part or parts of the lands therein described as are claimed to be owned by this defendant in fee by virtue of the patents hereinabove referred to from the State of Wisconsin.

This defendant denies that it is necessary to seek the aid of this court to the end that the defendant should be ousted from the possession of said lands, or that the court should order that said several patents issued by the State of Wisconsin and any deeds, instruments, or writings in any way affecting the title to said lands be surrendered and delivered up for cancellation and set aside and held for naught, and this defendant insists that by virtue of the enabling act aforesaid and the acceptance of its provisions in the constitution of the State of Wisconsin and the admission of said State into the Union said State of Wisconsin acquired the fee simple title to sections 16 in all lands belonging to the United States (particularly including the respective sections 16, or portions thereof, claimed herein by the defendant to belong to it) at the time of the admission of said State into the Union, and that said State of Wisconsin has at all times heretofore since its admission into the Union claimed the right to the fee of all lands in said sections 16, and has claimed
23 the actual fee of said sections and has exercised dominion and ownership over the same, and has issued sundry and divers patents to divers persons and corporations for portions thereof (particularly including the patentees to the lands hereinabove specifically referred to), and many of such persons and corporations grantees of said State as aforesaid, including this defendant and its mediate and immediate grantors, have exercised acts of ownership thereof and have paid taxes and made improvements thereon and have cut and hauled timber therefrom, and this defendant alleges in this behalf that all timber so cut and hauled by it was cut and hauled with

the consent of complaint and of the Indians, but this defendant denies that any such consent was necessary in the premises.

And this defendant prays that title to the lands herein claimed by it may be decreed and determined to be in it in fee simple free from all claims of any of the persons mentioned in said bill of complaint as patentees of the United States of America, or as its alleged wards.

VII.

This defendant shows to the court that the complainant is not entitled to the relief prayed for in its bill of complaint in so far as it prays that the patents issued by the State of Wisconsin be set aside, annulled, and held for naught, and this defendant, without waiving in any wise the other defenses herein set forth, shows that even though the court should hold that this defendant was not entitled to the full relief heretofore prayed herein, nevertheless this defendant has title to said lands so claimed by it subject only to the right of the Indians mentioned in said bill of complaint of hunting thereon with the other usual privileges of occupancy until required to remove by the President of the United States, and that
24 upon the making of such requirement by the President of the United States full and exclusive right of possession, user, and occupation will be vested by virtue of said patents and said mesne conveyances in the defendant.

VIII.

This defendant further shows that the said bill of complaint discloses a defect of parties in that it prays that the patents issued as aforesaid by the State of Wisconsin be set aside, annulled, and held for naught, and also prays that the same be surrendered up and cancelled and that all deeds, instruements, and writings which in any way affect the title to the premises and real estate therein described and set aside and cancelled without making said State of Wisconsin or the patentees of said State or the grantees or the parties to said deeds, instruements, and writings parties defendant to the bill of complaint.

IX.

This defendant, further answering, avers that even though the title of this defendant to the lands which are the subject matter of this suit be subject to the right of the Indians mentioned in said bill of complaint of hunting thereon with the other usual privileges of occupancy, such right of hunting and occupancy does not include the right of owning, taking, or cutting the timber thereon, or any part thereof, except as incident to hunting and occupancy of a similar nature habitual to and consistent with the nature of said Indians, and does not include the right to said Indians to use such timber commercially or the right to said Indians, or to the United States Govern-

ment as guardian of said Indians, or otherwise to prevent
25 the defendant herein (the owner of the fee simple title to said lands subject to such limited usage by the Indians) from cutting and marketing said timber.

J. S. STEARNS LUMBER COMPANY,
By W. W. GURLEY, *its Solicitor.*
By JOHN A. AYLWARD, JOSEPH E. DAVIES,
M. B. ALBRICH & CARL N. HILL,
Madison, Wis., its Solicitors.

Endorsed: 28 B, C. Dk. In the District Court of the United States of America for the Western District of Wisconsin. United States of America, complainant, vs. J. S. Stearns Lumber Company, a corporation, defendant. Answer of J. S. Stearns Lumber Company, defendant, to the bill of complaint filed in the above-entitled cause on January 31, 1913. Filed Mar. 15, 1913. F. W. Oakley, clerk.

26 Afterwards—to wit—Filed stipulation for substitution of solicitors as follows:

In the District Court of the United States of America for the Western District of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
J. S. STEARNS LUMBER COMPANY, A CORPORATION, DEFENDANT.

The undersigned defendant, J. S. Stearns Lumber Company, a corporation, and W. W. Gurley, John A. Aylward, Joseph E. Davies, M. B. Olbrich, and Carl N. Hill, its solicitors, hereby request that John M. Olin, Harry L. Butler, and William R. Curkeet be substituted as solicitors for said defendant in place of the said John A. Aylward, Joseph E. Davies, M. B. Olbrich, and Carl N. Hill. And we hereby consent to and request that such substitution be made.

Dated August 25, 1913.

J. S. STEARNS LUMBER COMPANY,
By L. K. BAKER,
Its ———
W. W. GURLEY,
JOHN A. AYLWARD,
JOSEPH E. DAVIES,
M. B. OLBRICH,
C. A. HILL.

27 We hereby consent to be substituted as solicitors for said defendant in the place of the above-named John A. Aylward, Joseph E. Davies, M. B. Olbrich, and Carl N. Hill.

JOHN M. OLIN,
HARRY L. BUTLER,
WM. R. CURKEET.

Endorsed: United States District Court, Western District of Wisconsin. 28 B. C. Dk. United States, complainant, vs. J. S. Stearns Lumber Co., a corporation, defendant. Stipulation for substitution of solicitors. Filed Oct. 3, 1913. F. W. Oakley, clerk. W. W. Gurley, John M. Olin, Harry L. Butler, & Wm. R. Curkeet, defts. solicitors.

28 Afterwards—to wit, Oct. 3, 1913—filed order of substitution of solicitors, as follows:

In the District Court of the United States of America for the Western District of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANT,
v.
J. S. STEARNS LUMBER COMPANY, A CORPORATION, DEFENDANT.

Upon the stipulation and consent of the defendant above named, J. S. Stearns Lumber Co., and its solicitors, W. W. Gurley, John A. Aylward, Joseph E. Davies, M. B. Olbrich, and Carl N. Hill, and the further consent to such substitution by John M. Olin, Harry L. Butler, and William R. Curkeet as solicitors in place of the said John A. Aylward, Joseph E. Davies, M. B. Olbrich, and Carl N. Hill, it is, on motion of the solicitors for said defendant, ordered that John M. Olin, Harry L. Butler, and William R. Curkeet be, and they hereby are, substituted as the solicitors for said defendant in the place of the said John A. Aylward, Joseph E. Davies, M. B. Olbrich, and Carl N. Hill, herein.

Dated October 3, 1913.

By the court:

A. L. SANBORN, *Judge.*

Endorsed: 28–B, Civil Docket. United States District Court, Western District of Wisconsin. United States of America, complainant, vs. J. S. Stearns Lumber Company, defendant. Order of substitution of solicitors. Filed Oct. 3, 1913. F. W. Oakley, clerk. W. W. Gurley, John M. Olin, Harry L. Butler, Wm. R. Curkeet, solicitors for defendant.

29 Afterwards—to wit, July 28, 1914—filed stipulations for case agreed, as follows:

In the District Court of the United States for the Western District of Wisconsin.

THE UNITED STATES OF AMERICA, COMPLAINANT,
v.
J. S. STEARNS LUMBER COMPANY, DEFENDANT.

Stipulations for case agreed.

It is hereby stipulated and agreed by and between the parties hereto, by their respective solicitors, that the facts hereinafter set

forth are admitted to be true, for the purpose of the hearing hereof, with the same force and effect in all respects as if proof thereof had been duly made; and that this case may be determined by the court on the pleadings herein, on the facts hereinafter stipulated, without further testimony except such as in these stipulations hereafter provided, and decree rendered in accordance with said pleadings and facts and the law applicable thereto.

I.

That prior to March 28, 1843 (the date on which was proclaimed the treaty with the Chippewa Indians hereinafter mentioned in paragraph II hereof), the lands involved in this suit were unceded Indian lands occupied by the Chippewa Indians of the Mississippi River and Lake Superior.

30

II.

That on October 4, 1842, a treaty between the Chippewa Indians of the Mississippi River and Lake Superior and the United States of America, represented by Robert Stuart, Commissioner of Indian Affairs, was entered into, by the terms of which said Indians ceded to the United States a large boundary of land, the lands in controversy being included therein, and on March 29, 1843, duly proclaimed, said treaty being found in 7th U. S. Stat., 591, to which reference is here made, and shall have the same force and effect as if incorporated herein, and a copy of said treaty may be hereto attached (marked Exhibit A) and made a part hereof.

III.

That thereupon, on said March 28, 1843, the said treaty became in full force and still continues to be in full force and effect.

IV.

That thereafter and in due course and from time to time the United States of America paid and performed all the considerations and agreements required and agreed to be paid and performed by it under said treaty.

V.

That on August 6, 1846, an act of Congress of the United States was passed and approved entitled "An act to enable the people of Wisconsin Territory to form a constitution and State government, and for the admission of such State into the Union." That said act is found in 9 U. S. Stat., 56, to which reference is hereby made, and shall have the same force and effect as if incorporated herein, and a copy of said act may be hereto attached (marked Exhibit B) and made a part hereof.

31

VI.

That thereafter, pursuant to said enabling act approved August 6, 1846, a constitutional convention of the people of said Territory was called and held in accordance with said enabling act, and, on February 1, 1848, adopted a constitution, which was thereafter duly ratified by vote of the people of said Territory on March 2, 1848. That said constitution so adopted is found in Wisconsin Statutes (Sanborn and Berryman), vol. 1, page 53, to which reference is here made, and shall have the same force and effect as if incorporated herein, and a copy of said constitution may be hereto attached (marked Exhibit C) and made a part hereof.

VII.

That thereafter the Territory of Wisconsin was admitted into the Union as the State of Wisconsin on an equal footing with the original States in all respects whatsoever, by the act of Congress of the United States approved May 29, 1848, said act being found in 9 U. S. Stats., 233, to which reference is here made, and shall have the same force and effect as if incorporated herein, and a copy of said act may be hereto attached (marked Exhibit D) and made a part hereof.

VIII.

That the Chippewa Indians of the Mississippi River and Lake Superior entered into a treaty with the United States on September 30, 1854, the lands in controversy herein being embraced therein, which treaty was approved and proclaimed on January 29, 1855, the same being found in 10 U. S. Stats., 1109, to which reference is here made, and shall have the same force and effect as if incorporated herein, and a copy of said treaty may be hereto attached (marked Exhibit E) and made a part hereof.

32

IX.

That thereupon, on January 29, 1855, the said treaty became in full force and still continues to be in full force and effect.

X.

That the United States duly from time to time paid and performed all the considerations and agreements required and agreed to be paid and performed by it under said treaty.

XI.

That all of the lands in controversy herein are embraced in what is now township forty-six (46) north, range two (2) west, 4th me-

ridian, Wisconsin; township forty-six (46) north, range three (3) west, 4th meridian; and township forty-seven (47) north, range two (2) west, 4th meridian; that the lands embraced in said townships have been, under the direction of the Secretary of the Interior, duly surveyed and plats thereof made, approved, and certified as follows:

(A) Township forty-six (46) north, range two (2) west, 4th mer.; the west township line surveyed in 1873; the north and east township lines resurveyed in 1873, and the survey of subdivisions of said townships commenced May 14, 1873, and completed June 17, 1873, as will appear by plat of said township approved and certified by the surveyor general on September 20, 1873, a certified copy of which plat may be offered in evidence herein and treated as proof of the facts on said plat stated.

(B) Township forty-six (46) north, range three (3) west, 4th mer.; the east township line surveyed in 1873; the north and west township lines surveyed in 1873; and the survey of the subdivisions of said township commenced June 18, 1873, and completed July 2, 1873, as will appear by plat of said township approved and
33 certified by the surveyor general on October 18, 1873, a certified copy of which plat may be offered in evidence herein and treated as proof of the facts on said plat stated.

(C) Township forty-seven (47) north, range two (2) west, 4th mer.; the township lines surveyed in June and July, 1852, and subdivisions of said township surveyed in August and September, 1858, as will appear by plat of said township approved and certified by the surveyor general on September 23, 1864, a certified copy of which plat may be offered in evidence herein and treated as proof of the facts on said plat stated.

XII.

That the only surveys made by or under the direction of the Interior Department that are relevant and material to the issues involved in this action are the following:

(A) Township forty-seven (47) north, range one (1) west, 4th mer.; east township line surveyed in July, 1847; south and west township lines surveyed in June, 1852, and subdivisions of said township surveyed in November, 1861, as will appear by plat of said township approved and certified by the surveyor general on December 20, 1861, a certified copy of which plat may be offered in evidence herein and treated as proof of the facts on said plat stated.

(B) Townships forty-seven (47) and forty-eight (48) north, range one (1) west, 4th mer.; township lines between townships forty-seven (47) and forty-eight (48) surveyed in 1872; survey of subdivisions commenced November 6, 1872, and completed November 19, 1872; lines retraced in 1872, as will appear by plat of said townships approved and certified by the surveyor general on March 18, 1873, a certified copy of which plat may be offered in evidence herein and treated as proof of the facts on said plat stated.

(C) Township forty-seven (47) north, range three (3)
34 west, 4th mer.: township lines surveyed in July, 1852, and subdivisions of said township surveyed in December, 1856, and April, 1858, as will appear by plat of said township approved and certified by the surveyor general on September 23, 1864, a certified copy of which plat may be offered in evidence herein and treated as proof of the facts on said plat stated.

(D) Township forty-six (46) north, range one (1) west, 4th mer.; east township line surveyed in July, 1847; west and south township lines surveyed in 1857; north township line surveyed in June, 1852; and subdivisions of said township surveyed in September and October, 1861, as will appear by plat of said township approved and certified by the surveyor general on December 20, 1861, a certified copy of which plat may be offered in evidence herein and treated as proof of the facts on said plat stated.

XIII.

That by a State patent of the State of Wisconsin, dated December 3, 1885, filed for record in the office of the recorder of Ashland County, Wisconsin, December 5, 1887, and there recorded in volume 23 of patents, page 266, and entered at the State land office November 6, 1885, there was conveyed or purported to be conveyed to John McGuigan the south one-half (S. ½) of the southwest one-quarter (SW. ¼) and the northeast one-quarter (NE. ¼) of the southeast one-quarter (SE. ¼), and the south one-half (S. ½) of the southeast one-quarter (SE. ¼) of section sixteen (16), township forty-six (46), range two (2) west, and, by a similar patent dated July 15, 1887, entered at the State land office June 20, 1887, and filed for record in the office of the recorder of Ashland County, Wisconsin, December 5, 1887, and there recorded in volume 23 of deeds, page 266, there was also conveyed or purported to be conveyed to said John McGuigan the north one-half (N. ½) of said section sixteen (16)
35 and the north one-half (N. ½) of the southwest one-quarter (SW. ¼) and the northwest one-quarter (NW. ¼) of the southeast one-quarter (SE. ¼) of said section sixteen (16), township forty-six (46), range two (2) west, said two patents conveying, or purporting to convey, to said John McGuigan all of said section sixteen (16), township forty-six (46), range two (2) west.

That by warranty deed dated December 7, 1887, and filed for record December 7, 1887, in the office of the recorder of Ashland County, Wisconsin, and there recorded in volume 26 of deeds, page 387, said John McGuigan (unmarried) conveyed, or purported to convey, to James M. Pereles, Thomas Jefferson Pereles, and S. Charles Herbst all of said section sixteen (16), township forty-six (46), range two (2) west.

That by warranty deed dated February 9, 1891, filed for record December 17, 1887, in the office of the recorder of Ashland County, Wisconsin, and there recorded in volume 26 of deeds, page 410, said

James M. Pereles and wife, Thomas Jefferson Pereles and wife, conveyed or purported to convey to William Marx an undivided one-third (⅓) of an undivided two-thirds (⅔) of all of section sixteen (16), township forty-six (46), range two (2) west.

That by warranty deed dated February 9, 1891, filed for record February 11, 1891, in the office of the recorder of Ashland County, Wisconsin, and there recorded in volume 45 of deeds, page 48, said William Marx and wife conveyed or purported to convey to James M. Pereles and Thomas Jefferson Pereles all of section sixteen (16), township forty-six (46), range two (2) west.

That by warranty deed dated February 3, 1900, and filed for record in the office of the recorder of Ashland County, Wisconsin, February 20, 1900, and there recorded in volume 67 of deeds, page 388, said James Pereles and wife, Thomas Jefferson
36 Pereles and wife, and S. Charles Herbst and wife, conveyed or purported to convey to Justus S. Stearns, all of said section sixteen (16), township forty-six (46), range two (2) west.

That by quit claim deed, dated April 16, 1900, and filed for record October 16, 1902, in the office of the recorder of Ashland County, Wisconsin, and there recorded in volume 53 of deeds, page 607, said Justus S. Stearns and wife conveyed or purported to convey to the J. S. Stearns Lumber Company all of said section sixteen (16), township forty-six (46), range two (2) west.

XIV.

That by State patent, dated May 25, 1887, entered at the State land office, May 6, 1887, filed for record June 14, 1887, in the office of the recorder of Ashland County, Wisconsin, and there recorded in volume 28 of deeds, page 325, the State of Wisconsin conveyed or purported to convey to John McGuigan, jr., the northeast one-quarter (NE. ¼), and the northwest one-quarter (NW. ¼), and the east one-half (E. ½) of the southeast one-quarter (SE. ¼), and the west one-half (W. ½) of the southwest one-quarter (SW. ¼) of section sixteen (16), township forty-six (46), range three (3) west.

That by mortgage, dated May 27, 1887, filed for record in the office of the recorder of Ashland County, Wisconsin, May 28, 1887, and there recorded in volume 2 of mortgages, page 591, said John McGuigan conveyed or purported to convey to Edwin Ellis and Thomas Bardon a part of the real estate last above described, and that by a satisfaction of mortgage, dated December 27, 1887, filed for record in the office of the recorder of Ashland County, Wisconsin, December 27, 1887, and there recorded in volume 4 of mortgages, page 105, said Edwin Ellis and Thomas Bardon re-
37 conveyed or purported to reconvey said real estate described in said mortgage, and to satisfy, so far as the parties thereto were concerned, the said mortgage above mentioned.

That by warranty deed, dated December 7, 1887, and filed for record in the office of the recorder of Ashland County, Wisconsin,

December 7, 1887, and there recorded in volume 26 of deeds, page 387, said John McGuigan (unmarried) conveyed or purported to convey to James M. Pereles, Thomas Jefferson Pereles, and S. Charles Herbst, the northeast one-quarter (NE. ¼) and the northwest one-quarter (NW. ¼) and the east one-half (E ½) of the southeast one-quarter (SE. ¼) and the west one-half (W. ½) of the southwest one-quarter (SW. ¼) of section sixteen (16), township forty-six (46), range three (3) west.

That by warranty deed, dated December 9, 1887, and filed for record December 17, 1887, in the office of the recorder of Ashland County, Wisconsin, and there recorded in volume 26 of deeds, page 410, said James M. Pereles and wife and Thomas Jefferson Pereles and wife conveyed or purported to convey to William Marx an undivided one-third of the undivided two-thirds (⅔) of the said real estate last above described in said section sixteen (16), township forty-six (46) north, range three (3) west.

That by warranty deed, dated February 9, 1891, filed for record February 11, 1891, in the office of the recorder of Ashland County, Wisconsin, and there recorded in volume 45 of deeds, page 48, said William Marx and wife conveyed or purported to convey to James M. Pereles and Thomas Jefferson Pereles all of said real estate last above described in said section sixteen (16), township forty-six (46) north, range three (3) west.

38 That by tax deed, dated June 16, 1893, filed for record June 16, 1893, in the office of the recorder of Ashland County, Wisconsin, and there recorded in volume 29 of deeds, page 498, Ashland County and the State of Wisconsin conveyed or purported to convey to K. K. Kennan, as assignee of Ashland County, the southwest one-quarter (SW. ¼) of the southwest one-quarter (SW. ¼) of section sixteen (16), township forty-six (46) north, range three (3) west, said real estate having been sold May 20, 1890, for taxes of the year 1889.

That by warranty deed, dated February 3, 1900, filed for record February 20, 1900, in the office of the recorder of Ashland County, Wisconsin, and there recorded in volume 67 of deeds, page 388, said James M. Pereles and wife, Thomas Jefferson Pereles and wife, and S. Charles Herbst and wife conveyed or purported to convey to Justus S. Stearns the north one-half (N. ½) of section sixteen (16), township forty-six (46) north, range three (3) west, and the east one-half (E. ½) of the southeast one-quarter (SE. ¼) and the west one-half (W. ½) of the southwest one-quarter (SW. ¼) of said section sixteen (16), township forty-six (46) north, range three (3) west.

That by quit claim deed, dated April 16, 1900, filed for record October 16, 1902, in the office of the recorder of Ashland County, Wisconsin, and there recorded in volume 53 of deeds, page 607, said Justus S. Stearns and wife conveyed or purported to convey to the J. S. Stearns Lumber Company all of said real estate last above

described in section sixteen (16), township forty-six (46) north, range three (3) west, said real estate being all of section sixteen (16) excepting only the west one-half (W. ½) of the southeast one-quarter (SE. ¼) and the east one-half (E. ½) of the southwest one-quarter (SW. ¼) thereof.

39 XV.

That the purchase price paid by the said J. S. Stearns Lumber Company for said real estate hereinabove in Paragraphs XIII and XIV described was the sum of nineteen thousand dollars ($19,000.00) in cash, and that since the date of said purchase above mentioned said J. S. Stearns Lumber Company has continuously paid all taxes and assessments made and levied upon or against said property.

XVI.

That by a State patent of the State of Wisconsin, dated June 3, 1882, entered at the State land office May 15, 1882, and filed for record in the office of the recorder of Ashland County, Wisconsin, June 19, 1899, in volume 14 of patents, page 176, said State of Wisconsin conveyed or purported to convey to Henry W. Lamberton the south one-half (S. ½) of section sixteen (16), township forty-seven (47) north, range two (2) west, and the north one-half (N. ½) of the northeast one-quarter (NE. ¼) and the southeast one-quarter (SE. ¼) of the northeast one-quarter (NE. ¼), and the southeast one-quarter (SE. ¼) of the northwest one-quarter (NW. ¼) of said section sixteen (16), township forty-seven (47), range two (2) west.

That by special warranty deed, dated May 16, 1892, and filed for record in the office of the recorder of Ashland County, Wisconsin, July 19, 1892, and there recorded in volume 51 of deeds, page 44, said Henry W. Lamberton and wife conveyed or purported to convey to John Robson an undivided one-half (½) of all of the real estate last above described.

That by warranty deed, dated June 12, 1889, filed for record in the office of the recorder of Ashland County, Wisconsin, on June 23, 1899, and there recorded in volume 67 of deeds, page 265, said Henry W. Lamberton and wife conveyed or purported to
40 convey to Thomas R. Lyons (Thomas R. Lyons being Thomas R. Lyon, instead of Thomas R. Lyons), an undivided one-half (½) of said real estate last above described.

That by warranty deed, dated June 13, 1899, filed for record in the office of the recorder of Ashland County, Wisconsin, June 23, 1899, and there recorded in volume 58 of deeds, page 587, said John Robson (widower) conveyed or purported to convey to E. R. Le Fevre an undiveded one-half (½) of the real estate last above described.

That by quitclaim deed, dated June 19, 1899, filed for record in the office of the recorder of Ashland County, Wisconsin, June 23,

1899, and there recorded in volume 62 of deeds, page 152, said E. R. Le Fevre and wife conveyed or purported to convey to the Brooks and Ross Lumber Company all of said real estate last above described.

That by quitclaim deed, dated June 14, 1899, filed for record in the office of the recorder of Ashland County, Wisconsin, June 23, 1899, and there recorded in volume 53 of deeds, page 46, said Brooks and Ross Lumber Company conveyed or purported to convey for the express consideration of eight thousand dollars ($8,000.00) to Thomas R. Lyon an undivided one-half (½) of said real estate last above described.

That by quitclaim deed, dated September 24, 1901, filed for record in the office of the recorder of Ashland County, Wisconsin, September 26, 1901, and there recorded in volume 62 of deeds, page 303, said Thomas R. Lyon and wife conveyed or purported to convey to the J. S. Stearns Lumber Company for the express consideration of twenty-one thousand dollars ($21,000.00) the north one-half (N. ½) of the northeast one-quarter (NE. ¼), the southeast one-quarter (SE. ¼) of the northeast one-quarter (NE. ¼), and the
41 southeast one-quarter (SE. ¼) of the northwest one-quarter (NW. ¼), and the south one-half (S. ½) of said section sixteen (16), township forty-seven (47) north, range two (2) west.

XVII.

That the purchase price paid by the said J. S. Stearns Lumber Company for said real estate hereinabove in paragraph XVI described was the sum of twenty-one thousand dollars ($21,000.00) in cash, and that since the date of said purchase above mentioned, the said J. S. Stearns Lumber Company has continuously paid all taxes and assessments made upon or levied against said property.

XVIII.

That by State patent of the State of Wisconsin, dated December 2, 1881, filed for record in the office of the recorder of Ashland County, Wisconsin, October 15, 1885, and there recorded in volume 14 of patents, page 451, and entered at the State land office October 29, 1881, conveyed or purported to so be conveyed to Philetus Sawyer the north one-half (N. ½) of the northwest one-quarter (NW. ¼) and the southwest one-quarter (SW. ¼) of the northwest one-quarter (NW. ¼) of section sixteen (16), township forty-seven (47) north, range two (2) west.

That by a land contract, dated December 28, 1886, filed for record in the office of the recorder of Ashland County, Wisconsin, February 2, 1887, and there recorded in volume 20 of deeds, page 589, M. C. Ring, C. A. Youman, and James Hill agreed to convey or cause to be conveyed to George C. Swallow the north one-half of the northwest one quarter (NW. ¼) and the southwest one-quarter (SW. ¼) of the

northwest one-quarter (NW. ¼) of section sixteen (16), township forty-seven (47) north, range two (2) west, upon the understanding expressed in the deed that "the said parties of the first part
42 hold the aforesaid land under the written contract from Philetus Sawyer and Edgar P. Sawyer."

That by warranty deed, dated December 22, 1888, filed for record January 10, 1889, in the office of the recorder of Ashland County, Wisconsin, and there recorded in volume 38 of deeds, page 380, Philetus Sawyer (widower) and Edgar P. Sawyer and wife conveyed or purported to convey to M. C. Ring, C. A. Youman, and James Hill all of said property in said section sixteen (16) last above described.

That by warranty deed, dated December 31, 1888, filed for record January 10, 1889, in the office of the recorder of Ashland County, Wisconsin, and there recorded in volume 38 of deeds, page 383, the said M. C. Ring and wife, the said C. A. Youman and wife, and the said James Hill and wife (Martha Hill, the wife of James Hill, acting by her attorney, H. C. Baker, under full power of attorney dated August 13, 1880, filed for record in the office of the recorder of Ashland County, Wisconsin, on January 10, 1889, and there recorded in volume 30 of deeds, page 299) conveyed or purported to convey to George C. Swallow all of said real estate in said section sixteen (16), township forty-seven (47) north, range two (2) west, last above described.

That by warranty deed, dated February 16, 1889, filed for record in the office of the recorder of Ashland County, Wisconsin, July 23, 1889, and there recorded in volume 41 of deeds, page 107, said George C. Swallow and wife conveyed or purported to convey to Montreal River Lumber Company, a corporation, all of said property last above described in said section sixteen (16), township forty-seven (47) north, range two (2) west; and that by mortgage, dated February 21, 1889, filed for record in the office of the recorder of Ashland County, Wisconsin, March 4, 1889, and there recorded in volume 9 of mortgages, at page 473, the said Montreal River Lum-
43 ber Company conveyed or purported to convey to George C. Swallow all of said property last above described in said section sixteen (16), township forty-seven (47) north, range two (2) west.

That by assignment of mortgage, dated May 11, 1889, filed for record in the office of the recorder of Ashland County, Wisconsin, May 14, 1889, and there recorded in volume 5 of mortgages, page 515, the said George C. Swallow assigned or purported to assign to Albert Conro the said mortgage, dated February 21, 1889, from said Montreal River Lumber Company to the said George C. Swallow; and that by satisfaction of mortgage, dated September 22, 1891, filed for record in the office of the recorder of Ashland County, Wisconsin, November 10, 1899, and there recorded in volume 15 of mortgages, page 562, the said Albert Conro conveyed or purported to

convey to Montreal River Lumber Company all of said property in said section sixteen (16), last above described, and to satisfy and discharge said mortgage dated February 21, 1889, from Montreal River Lumber Company to said George C. Swallow.

That by waranty deed, dated December 17, 1900, filed for record in the office of the recorder of Ashland County, Wisconsin, on December 31, 1900, in volume 67 of deeds, page 517, the said Montreal River Lumber Company conveyed or purported to convey to the J. S. Stearns Lumber Company the real estate last above described, for the express consideration of six thousands dollars ($6,000.00), being the north one-half (N. ½) of the northwest one-quarter (NW. ¼) and the southwest one-quarter (SW. ¼) of the northwest one-quarter (NW. ¼), all in section sixteen (16), township forty-seven (47) north, range two (2) west.

XIX.

That the purchase price paid by the J. S. Stearns Lumber
44 Company for the said real estate hereinabove in paragraph XVIII described, was the sum of six thousand dollars ($6,000.00), and that since the date of said purchase the said J. S. Stearns Lumber Company has continuously paid all taxes and assessments made upon or levied against said property.

That the said real estate above in paragraphs XVI and XVIII described constitutes the whole of said section sixteen (16), township forty-seven (47) north, range two (2) west, excepting only the southwest one-quarter (SW. ¼) of the northeast one-quarter (NE. ¼) thereof.

XX.

That prior to the purchase of any of said property above in paragraphs XIII, XIV, XVI, and XVIII described, the said J. S. Stearns Lumber Company made or caused to be made, by reputable attorneys, careful examination of title to the said property, and caused it to be cruised and examined by experts; and that the said J. S. Stearns Lumber Company was advised by said attorneys that the title to the said land was good, and that the State of Wisconsin, from which said company claimed, through the divers mesne conveyances above mentioned, had acquired a good title thereto from the United States by the act admitting said State into the Union.

XXI.

That the said State of Wisconsin by virtue of its organization and admission into the Union upon an equal footing with the other States, claimed title to all school sections or section sixteen (16) hereinabove described, and the right to make patents thereto to individuals.

XXII.

That in pursuance of the treaty concluded September 30,
45 1854, and proclaimed January 29, 1855, the Secretary of the Interior of the United States deposited in the General Land Office of the United States an order bearing date June 22, 1907, accompanied by schedule of returns dated June 21, 1907, from the Office of Indian Affairs containing a list of selections of lands for certain Indians residing on the Bad River or La Pointe Reservation, and that on the 26th day of June, 1907, the President of the United States, in accordance with the provisions of Article III of said treaty, approved the selections of William Ashman, Charles Ashman, Frank Fisk, Mary Sero, Nancy Headflyer, Ambrose Robideaux, and Joseph Connors, senior, and thereafter and on the 16th day of December, 1907, the United States executed patents conveying, or purporting to convey, in severalty the following described lands:

(1) To William Ashman, the north one-half (N. ½) of the southwest one-quarter (SW. ¼) of section sixteen (16), township forty-six (46) north, range two (2) west.

(2) To Charles Ashman, the north one-half (N. ½) of the northwest one-quarter (NW. ¼) of section sixteen (16), township forty-six (46) north, range two (2) west.

(3) To Frank Fisk, the north one-half (N. ½) of the northeast one-quarter (NE. ¼) of section sixteen (16), township forty-six (46) north, range two (2) west.

(4) To Mary Sero, the east one-half (E. ½) of the southwest one-quarter (SW. ¼), section sixteen (16), township forty-seven (47) north, range two (2) west.

(5) To Nancy Headflyer, the west one-half (W. ½) of the northwest one-quarter (NW. ¼), of section sixteen (16), township forty-seven (47) north, range two (2) west.

(6) To Ambrose Robideaux, the north one-half (N. ½) of
46 the southwest one-quarter (SW. ¼), section sixteen (16), township forty-six (46) north, range three (3) west.

(7) To Joseph Connors, senior, the southeast one-quarter (SE. ¼) of the northeast quarter (NE. ¼), and the northeast one-quarter (NE. ¼) of the southeast one-quarter (SE. ¼) of section sixteen (16), township forty-six (46) north, three (3) west, all of which said land is situated in the county of Ashland, in the said State of Wisconsin.

XXIII.

That said William Ashman, Charles Ashman, Frank Fisk, Mary Sero, Nancy Headflyer, Ambrose Robideaux, and Joseph Connors, senior, were, on the 16th day of December, 1907, the date of the issuance of said patents by the United States of America, have continued to be and now are members of the Chippewa tribe of Indians

and wards of the Government, under the charge of an Indian superintendent or agent of the United States, and residing upon the Bad River or La Pointe Reservation in Ashland County, in the State of Wisconsin, and that each of said patents, as soon as the same was issued, was transmitted to the Indian Agent in charge of the said La Pointe Agency for delivery to the said William Ashman, Charles Ashman, Frank Fisk, Mary Sero, Nancy Headflyer, Ambrose Robideaux, and Joseph Connors, senior, and by said agent delivered to said patentees, and that they claim to be and at all times since the date of said patents have claimed to be, the owners of the lands in said patents described.

XXIV.

That all of the said patents were in the form and contained the provisions and conditions set forth in the form of patent hereto attached (marked Exhibit E), the blanks for dates, descriptions, names, and the like being appropriately filled in as to each such patent, with the particular date relative thereto.

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XXV.

The property so conveyed or purporting to be conveyed by said patents to the said Indians, respectively, in severalty is a part of the property so conveyed, or purporting to be conveyed, by the patents hereinabove mentioned from the State of Wisconsin, and through mediate and immediate conveyances to the J. S. Stearns Lumber Company as hereinabove fully set forth, excepting only in the case of the certain patent from the United States of America to Ambrose Robideaux, conveying, or purporting to convey, to the said Ambrose Robideaux in severalty the north one-half (N. ½) of the southwest one-quarter (SW. ¼) of section sixteen (16), township forty-six, (46), range three (3) west; that is to say, as to one-half of said property—to-wit, the northeast one-quarter (NE. ¼) of the southwest one-quarter (SW. ¼) of section sixteen (16), township forty-six (46), range three (3) west, to which the said J. S. Stearns Lumber Company makes no claim of title.

XXVI.

That the various patentees hereinabove named in paragraphs XIII, XIV, XVI, and XVIII, of the State of Wisconsin and their mediate and immediate grantees have from time to time since the issuing of said respective patents, paid taxes and assessments made and assessed by the State, and cut timber on the said lands without interference or hindrance by or on the part of the United States until the year 1904, when the United States Secretary of the Interior, Ethan Allen Hitchcock, set up the claim, on behalf of the Indians of the La Point band, to the ownership of said lands, and forbade the cutting of timber by the said grantees of the State.

XXVII.

That until the allotments hereinabove mentioned were made no allotment had ever been patented to any member of the
48 tribe to any part of any section sixteen (16); that the Secretary of the Interior had, through the United States Indian Department, from time to time, allotted to various members of the tribe of the La Pointe band of Indians, eighty (80) acres per capita of lands within the said La Pointe Reservation on sections other than sections sixteen (16) and had caused patents thereto to be issued to members of said tribe as individuals; that action was instituted by original bill in equity filed in the Supreme Court of the United States on the 18th day of September, 1904 (original case No. 12), against the Secretary of the Interior by the State of Wisconsin, in relation to the allotting of lands on said section sixteen (16) and the issuance of patents thereto, the said action being reported in 201st United States Supreme Report at page 202 of case entitled Wisconsin v. Hitchcock. It is stipulated that either party to this action may introduce in evidence any part of the record in said action that it may desire.

XXVIII.

That, whereas the defendant herein has instituted suits in the Circuit Court of the County of Ashland, in the State of Wisconsin, against William Ashman, Charles Ashman, Frank Fisk, Mary Sero, Nancy Headflyer, Ambrose Robideaux, and Joseph Connors, senior, respectively, alleging it to be the owner of the land described in the complaints in the said several actions, and asking for the removal of cloud from its title thereto, copies of which said complaints, showing the dates of commencement of said actions, are hereto attached and made a part hereof as exhibits (F to L inclusive); and, whereas, certain stipulations were entered into in said actions, true copies of which are hereto attached and made a part hereof as exhibits
49 (1 to 21, inclusive); and, whereas, it has been agreed by and between the parties hereto that said J. S. Stearns Lumber Company will at once dismiss said actions heretofore instituted in said Circuit Court of Ashland County, Wisconsin; and, whereas, under the said stipulations, the J. S. Stearns Lumber Company has cut certain timber upon portions of the land covered by said stipulations, a true statement thereof, showing the amount removed, the specie, and amount or amounts deposited with the superintendent of Indian schools of the La Pointe Reservation for the benefit of the party who shall finally be entitled thereto, being hereto attached marked exhibit (22): It is hereby stipulated and agreed by and between the parties hereto that the stipulations entered into by and between the J. S. Stearns Lumber Company, defendant herein, and the several parties against whom suit was, by said defendant herein, instituted

in the Circuit Court of Ashland County, shall be treated and considered as stipulations entered into in this cause by and between the parties to this action, with the same force and effect as if they had been entered into in this action between the parties hereto, and that the allegations of the complaint herein shall be deemed sufficient in all respects to cover the same.

XXIX.

That additional evidence may be offered by either party hereto before a commissioner to be by the court duly appointed for the purpose of taking the testimony and transmitting to the court before whom this action is tried, such evidence as either party may desire to offer as to the value of timber cut or removed from the land embraced in this action, it being expressly agreed and understood that the stipulations hereinbefore referred to as made in the said cases pending in the Circuit Court of County of Ashland, as amended by treating the said stipulations as if made by and between the
50 parties to this action, are expressly recognized and adopted herein.

XXX.

That the evidence hereinbefore stipulated and provided for shall be the evidence on which this action shall be heard and determined, unless the court shall desire to hear further testimony, in which event, the court may hear such further testimony, complainant and defendant expressly reserving the right to object to any portion of said evidence and except to its introduction.

THE UNITED STATES OF AMERICA, COMPLAINANT,
By C. C. DANIELS,
Attorney of Department of Justice, Solicitor.
J. S. STEARNS LUMBER COMPANY, DEFENDANT,
By W. W. GURLEY and ARTHUR DYRENFORTH,
Solicitors for Defendant.

51 Exhibit E—4-454.

The United States of America. General Land Office. No. —.

To all to whom these presents shall come, greeting:

Whereas, there has been deposited in the General Land Office of the United States an order bearing date ——— from the Secretary of the Interior, accompanied by a schedule with return, dated ———, from the Office of Indian Affairs, containing a list of selections of land for certain Indians ——— as contemplated by the treaty concluded September 30, 1854, with the Chippewa Indians of Lake Superior and the Mississippi, whereby it appears that on the —— day of ——— the President, in accordance with the provisions

of the 3d article of said treaty, approved the selection of ———, being ——— according to the official plat of the survey of said lands returned to the General Land Office by the surveyor general.

Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the said treaty, the order, and return, with schedule aforesaid, have given and granted, and by these presents do give and grant, unto the said ——— and —— heirs, the said tract above described; but with the stipulation that said ——— and —— heirs shall not sell, lease, or in any manner alienate, said tract without the consent of the President of the United States; to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatso-
52 ever nature thereunto belonging, unto the said ——— and to —— heirs forever; provided, as aforesaid, that ——— and —— heirs shall not sell, lease, or in any manner alienate, said tract without the consent of the President of the United States.

In testimony whereof, I, ———, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereto affixed.

Given under my hand at the city of Washington, the —— day of ———, in the year of our Lord one thousand eight hundred and ———, and of the independence of the United States the one hundred and ———.

By the President:

——— ———,

By ———, *Secretary.*

——— ———,

Recorder of the General Land Office.

53 EX. F.

J. S. STEARNS LUMBER COMPANY (A CORPORATION), plaintiff, *v.* WILLIAM ASHMAN, DEFENDANT.	In Circuit Court, Ashland County.

And now comes the above-named plaintiff, by Quarles, Spence & Quarles, its attorneys, and for complaint against the above-named defendant alleges and shows to the court:

1. That at all of the times hereinafter mentioned the plaintiff was, ever since has been, and still is, a corporation, organized and existing under and by virtue of the laws of the State of Wisconsin.

2. That the plaintiff is the owner in fee of the following described land, to wit, the north one-half of the southwest quarter of section sixteen, town forty-six, range two west, in the county of Ashland and State of Wisconsin, and that the same is vacant and unoccupied.

3. That the defendant claims an interest or estate in said premises adverse to the plaintiff.

Wherefore plaintiff demands judgment that it be declared to be the owner in fee of said premises, and that the defendant has
54 no interest therein, and for the costs and disbursements of this action.

QUARLES, SPENCE & QUARLES,
Plaintiff's Attorneys.

STATE OF WISCONSIN,
County of Milwaukee, ss:

L. K. Baker, being first duly sworn, deposes and says he is an officer—to wit, the president—of the above-named plaintiff, and makes this verification on its behalf: That the reason this verification is not made by the plaintiff is that it is a corporation. That affiant's knowledge as to the title to said premises is the fact that he has in his possession as president of said corporation a patent thereto from the State of Wisconsin under which said plaintiff claims. That his knowledge as to the claim of the defendant is based upon the records of the United States Indian office at Ashland, Wisconsin. That his knowledge as to the vacancy or nonoccupation of said premises is from personal observation, and therefore he says that all of the allegations of the said complaint are true.

L. K. BAKER.

Subscribed and sworn to before me this 7th day of September, 1908.

LOUIS QUARLES,
Notary Public, Milwaukee County, Wisconsin.

55 EX. G.

J. S. STEARNS LUMBER COMPANY (A CORPORATION), plaintiff, v. CHARLES ASHMAN, DEFENDANT.	In Circuit Court, Ashland County.

And now comes the above-named plaintiff, by Quarles, Spence & Quarles, its attorneys, and for complaint against the above-named defendant alleges and shows to the court:

1. That at all of the times hereinafter mentioned the plaintiff was, ever since has been, and still is, a corporation, organized and existing under and by virtue of the laws of the State of Wisconsin.

2. That the plaintiff is the owner in fee of the following described land, to wit, the north one-half of the northwest quarter of section sixteen, town forty-six, range two west, in the county of Ashland and State of Wisconsin, and that the same is vacant and unoccupied.

3. That the defendant claims an interest or estate in said promises adverse to the plaintiff.

Wherefore plaintiff demands judgment that it be declared to be the owner in fee of said premises and that the defendant has no interest therein, and for the costs and disbursements of this action.

QUARLES, SPENCE & QUARLES,
Plaintiff's Attorneys.

56 STATE OF WISCONSIN,
County of Milwaukee, ss:

L. K. Baker, being first duly sworn, deposes and says he is an officer—to wit, the president—of the above-named plaintiff, and makes this verification on its behalf: That the reason this verification is not made by the plaintiff is that it is a corporation. That affiant's knowledge as to the title to said premises is the fact that he has in his possession as president of said corporation a patent thereto from the State of Wisconsin, under which said plaintiff claims. That his knowledge as to the claim of the defendant is based upon the records of the United States Indian office at Ashland, Wisconsin. That his knowledge as to the vacancy or nonoccupation of said premises is from personal observation, and therefore he says that all of the allegations of the said complaint are true.

L. K. BAKER.

Subscribed and sworn to before me this 7th day of September, 1908.

LOUIS QUARLES,
Notary Public, Milwaukee County, Wisconsin.

57 Ex. H.

J. S. STEARNS LUMBER COMPANY (A CORPORATION), plaintiff,
v.
FRANÆ FISKE, DEFENDANT,
} In Circuit Court, Ashland County.

And now comes the above-named plaintiff, by Quarles, Spence and Quarles, its attorneys, and for complaint against the above-named defendant alleges and shows to the court:

1. That at all of the times hereinafter mentioned the plaintiff was, ever since has been, and still is, a corporation, organized and existing under and by virtue of the laws of the State of Wisconsin.

2. That the plaintiff is the owner in fee of the following-described land, to wit, the north one-half of the northeast quarter of section sixteen, town forty-six, range two west, in the county of Ashland and State of Wisconsin, and that the same is vacant and unoccupied.

3. That the defendant claims an interest or estate in said premises adverse to the plaintiff.

Wherefore, plaintiff demands judgment that it be declared to be the owner in fee of said premises and that the defendant has no interest therein, and for the costs and disbursements of this action.

QUARLES, SPENCE & QUARLES,
Plaintiff's Attorneys.

58 STATE OF WISCONSIN,
County of Milwaukee, ss:

L. K. Baker, being first duly sworn, deposes and says he is an officer—to wit, the president—of the above-named plaintiff, and makes this verification on its behalf: That the reason this verification is not made by the plaintiff is that it is a corporation. That affiant's knowledge as to the title to said premises is the fact that he has in his possession as president of said corporation a patent thereto from the State of Wisconsin under which said plaintiff claims. That his knowledge as to the claim of the defendant is based upon the records of the United States Indian office at Ashland, Wisconsin. That his knowledge as to the vacancy or nonoccupation of said premises is from personal observation, and therefore he says that all of the allegations of the said complaint are true.

L. K. BAKER.

Subscribed and sworn to before me this 7th day of September, 1908.

LOUIS QUARLES,
Notary Public, Milwaukee County, Wisconsin.

59 EX. I.

J. S. STEARNS LUMBER COMPANY (A CORPORATION), plaintiff, v. MARY SERO, DEFENDANT.	In Circuit Court, Ashland County.

And now comes the above-named plaintiff, by Quarles, Spence & Quarles, its attorneys, and for complaint against the above-named defendant alleges and shows to the court:

1. That at all of the times hereinafter mentioned the plaintiff was, ever since has been, and still is, a corporation, organized and existing under and by virtue of the laws of the State of Wisconsin.

2. That the plaintiff is the owner in fee of the following-described land, to wit, the south one-half of the southwest quarter of section sixteen, town forty-seven, range two west, in the county of Ashland and State of Wisconsin, and that the same is vacant and unoccupied.

3. That the defendant claims an interest or estate in said premises adverse to the plaintiff.

Wherefore, plaintiff demands judgment that it be declared to be the owner in fee of said premises and that the defendant has no interest therein, and for the costs and disbursements of this action.

QUARLES, SPENCE & QUARLES,
Plaintiff's Attorneys.

60 STATE OF WISCONSIN,
County of Milwaukee, ss:

L. K. Baker, being first duly sworn, deposes and says he is an officer—to wit, the president—of the above-named plaintiff, and

makes this verification on its behalf: That the reason this verification is not made by the plaintiff is that it is a corporation. That affiant's knowledge as to the title to said premises is the fact that he has in his possesssion as president of said corporation a patent thereto from the State of Wisconsin under which said plaintiff claims. That his knowledge as to the claim of the defendant is based upon the records of the United States Indian office at Ashland, Wisconsin. That his knowledge as to the vacancy or nonoccupation of said premises is from personal observation, and therefore he says that all of the allegations of the said complaint are true.

L. K. BAKER.

Subscribed and sworn to before me this 6th day of May, 1909.

[L. S.] EMILY B. HILL,
Notary Public, Ashland County, Wisconsin.

My commission expires Oct. 21, 1912.

61 Ex. J.

J. S. STEARNS LUMBER COMPANY (A CORPORATION), plaintiff,
v.
NANCY HEADFLYER, DEFENDANT.
} In Circuit Court, Ashland County.

And now comes the above-named plaintiff, by Quarles, Spence & Quarles, its attorneys, and for complaint against the above-named defendant alleges and shows to the court:

1. That at all of the times hereinafter mentioned the plaintiff was, ever since has been, and still is, a corporation organized and existing under and by virtue of the laws of the State of Wisconsin.

2. That the plaintiff is the owner in fee of the following described land—to wit, the west one-half of the northwest quarter of section sixteen, town forty-seven, range two west, in the county of Ashland, and State of Wisconsin, and that the same is vacant and unoccupied.

3. That the defendant claims an interest or estate in said premises adverse to the plaintiff.

Wherefore, plaintiff demands judgment that it be declared to be the owner in fee of said premises and that the defendant has no interest therein, and for the costs and disbursements of this action.

QUARLES, SPENCE & QUARLES.
Plaintiff's Attorneys.

62 STATE OF WISCONSIN,
County of Milwaukee, ss:

L. K. Baker, being first duly sworn, deposes and says he is an officer—to wit, the president—of the above-named plaintiff, and makes this verification on its behalf. That the reason this verification is not made by the plaintiff is that it is a corporation. That affiant's knowledge as to the title to said premises is the fact that he

has in his possession as president of said corporation a patent thereto from the State of Wisconsin under which said plaintiff claims. That his knowledge as to the claim of the defendant is based upon the records of the United States Indian office at Ashland, Wisconsin. That his knowledge as to the vacancy or nonoccupation of said premises is from personal observation, and therefore he says that all of the allegations of the said complaint are true.

L. K. BAKER.

Subscribed and sworn to before me this 6th day of May, 1909.
[L. S.] EMILY B. HILL.
Notary Public, Ashland County, Wisconsin.
My commission expires Oct. 21, 1912.

63 Ex. K.

J. S. STEARNS LUMBER COMPANY (A CORPORATION), plaintiff,
v.
AMBROSE ROBIDEAUX, DEFENDANT.
In Circuit Court, Ashland County.

And now comes the above-named plaintiff, by Quarles, Spence & Quarles, its attorneys, and for complaint against the above-named defendant alleges and shows to the court:

1. That at all of the times hereinafter mentioned the plaintiff was, ever since has been, and still is, a corporation, organized and existing under and by virtue of the laws of the State of Wisconsin.

2. That the plaintiff is the owner in fee of the following described land—to wit, the north half of the southwest quarter of section sixteen, town forty-six, range three west, in the county of Ashland, and State of Wisconsin, and that the same is vacant and unoccupied.

3. That the defendant claims an interest or estate in said premises adverse to the plaintiff.

Wherefore, plaintiff demands judgment that it be declared to be the owner in fee of said premises and that the defendant has no interest therein, and for the costs and disbursements of this action.

QUARLES, SPENCE & QUARLES,
Plaintiff's Attorneys.

64 STATE OF WISCONSIN,
County of Milwaukee, ss:

L. K. Baker, being first duly sworn, deposes and says he is an officer—to wit, the president—of the above-named plaintiff, and makes this verification on its behalf. That the reason this verification is not made by the plaintiff is that it is a corporation. That affiant's knowledge as to the title to said premises is the fact that he has in his possession as president of said corporation a patent thereto from the State of Wisconsin under which said plaintiff claims. That his knowledge as to the claim of the defendant is based upon the records of the United States Indian office at Ashland, Wisconsin. That his knowledge as to the vacancy or nonoccupation of said premises is

from personal observation, and therefore he says that all of the allegations of the said complaint are true.

L. K. BAKER.

Subscribed and sworn to before me this 7th day of September, 1908.

LOUIS QUARLES,
Notary Public, Milwaukee County, Wisconsin.

65 EX. L.

J. S. STEARNS LUMBER COMPANY (A CORPORATION), plaintiff.
v.
JOSEPH CONNORS, SR., DEFENDANT.
} In Circuit Court, Ashland County.

And now comes the above-named plaintiff, by Quarles, Spence & Quarles, its attorneys, and for complaint against the above-named defendant alleges and shows to the court:

1. That at all of the times hereinafter mentioned the plaintiff was, ever since has been, and still is a corporation, organized and existing under and by virtue of the laws of the State of Wisconsin.

2. That the plaintiff is the owner in fee of the following described land—to wit, the southeast quarter of the northeast quarter and the northeast quarter of the southeast quarter of section sixteen, town forty-six, range three west, in the county of Ashland and State of Wisconsin, and that the same is vacant and unoccupied.

3. That the defendant claims an interest or estate in said premises adverse to the plaintiff.

Wherefore, plaintiff demands judgment that it be declared to be the owner in fee of said premises and that the defendant has no interest therein, and for the costs and disbursements of this action.

QUARLES, SPENCE & QUARLES,
Plaintiff's Attorneys.

66 STATE OF WISCONSIN,
County of Milwaukee, ss:

L. K. Baker, being first duly sworn, deposes and says, he is an officer—to wit, the president—of the above-named plaintiff, and makes this verification on its behalf. That the reason this verification is not made by the plaintiff is that it is a corporation. That affiant's knowledge as to the title to the said premises is the fact that he has in his possession as president of said corporation a patent thereto from the State of Wisconsin under which said plaintiff claims. That his knowledge as to the claim of the defendant is based upon the records of the United States Indian office at Ashland, Wisconsin. That his knowledge as to the vacancy or nonoccupation of said premises is from personal observation, and therefore he says that all of the allegations of the said complaint are true.

L. K. BAKER.

Subscribed and sworn to before me this 7th day of September, 1908.

LOUIS QUARLES,
Notary Public, Milwaukee County, Wisconsin.

67 Ex. 1.

J. S. Stearns Lumber Company, plaintiff, v. William Ashman, defendant. | State of Wisconsin, in Circuit Court for Ashland County.

It is hereby stipulated by and between the parties to the above-entitled action that all of the burned timber upon the land described in the complaint herein, which for the purposes of preservation and conservation of the same shall be cut during the summer of 1911, may be cut by the plaintiff under the supervision of the superintendent in charge of the La Pointe Agency at Ashland, Wisconsin, in accordance with the regulations applicable to existing contracts, and that plaintiff will pay the defendant, if the latter shall by the judgment of the court in said action be held to be the owner of said land, the fair market value thereof at the time of cutting, to be fixed by the court in this action. Such price, however, shall not be less than seven ($7.00) dollars per thousand feet for white and Norway pine, four ($4.00) dollars per thousand feet for spruce, two ($2.00) dollars per thousand feet for tamarack, and one ($1.00) dollar per thousand feet for balsam; and if the decision in this case shall not be had before July 1st, 1911, that plaintiff will pay into court for the benefit of the party who shall finally be entitled thereto the aforesaid price for the timber so cut, the scale of such timber to be determined in the manner provided in existing contracts for cutting other timber on the Bad River Indian Reservation.

Dated Feb. 7, 1911.

Quarles, Spence & Quarles,
Attorney for Plaintiff.
George H. Gordon,
Attorney for Defendant.

68 Ex. 2.

J. S. Stearns Lumber Company, plaintiff, v. William Ashman, defendant. | State of Wisconsin, in Circuit Court for Ashland County.

It is hereby stipulated by and between the parties to the above-entitled action that the stipulations entered into and dated February 7th, 1911, be amended so as to read as follows:

It is hereby stipulated by and between the parties to the above-entitled action that all of the burned timber upon the land described in the complaint herein, which for the purposes of preservation and conservation of the same shall be cut during the summer of 1911, may be cut by the plaintiff under the supervision of the superintendent

in charge of the La Pointe Agency at Ashland, Wisconsin, in accordance with the regulations applicable to existing contracts, and that plaintiff will pay the defendant, if the latter shall by the judgment of the court in said action be held to be the owner of said land, the fair market value thereof at the time of cutting, to be fixed
69 by the court in this action. Such price, however, shall not be less than seven ($7.00) dollars per thousand feet for white and Norway pine, four ($4.00) dollars per thousand feet for spruce, two ($2.00) dollars per thousand feet for tamarack, and one ($1.00) dollar per thousand feet for balsam; and if the decision in this case shall not be had before July 1st, 1911, plaintiff will pay to S. W. Campbell, superintendent and special disbursing agent for the United States Government at Ashland, Wisconsin, for the benefit of the party who shall finally be entitled thereto the aforesaid price for the timber so cut, the scale of such timber to be determined in the manner provided in existing contracts for cutting other timber on the Bad River Indian Reservation.

Dated March 17th, 1911.

QUARLES, SPENCE & QUARLES,
Attorney for Plaintiff.
GEORGE H. GORDON,
Attorney for Defendant.

70 Ex. 3.

J. S. STEARNS LUMBER COMPANY (A CORPORATION), plaintiff,
v.
WILLIAM ASHMAN, DEFENDANT.

State of Wisconsin.
Circuit Court for
Ashland County.

It is hereby stipulated, by and between the parties to the above-entitled action, that all of the burned timber upon the land described in the complaint herein, which, for the purposes of preservation and conservation of the same, should be cut during the summer of 1909, may be cut by the plaintiff under the supervision of the superintendent in charge of the La Pointe Agency at Ashland, Wisconsin, in accordance with the regulations applicable to existing contracts, and that the plaintiff will pay to the defendant, if the latter shall, by the judgment of the court in said action, be held to be the owner of said land, the fair market value thereof at the time of the cutting, to be fixed by the court in this action (such price, however, shall not be less than eight dollars ($8.00) per thousand feet for white and Norway pine, and that if a decision in this case shall not be had before July 1st, 1910, the plaintiff will pay into court for the benefit of the party who shall finally be entitled
71 thereto the sum of eight dollars ($8.00) per thousand feet for the timber so cut, the scale of such timber to be determined in

the manner provided in existing contracts for cutting other timber on the Bad River Indian Reservation.

Dated June 19th, 1909.

QUARLES, SPENCE & QUARLES,
Attorneys for Plaintiff.
GEORGE H. GORDON,
United States Attorney,
Western District of Wisconsin,
Defendant's Attorney.

72 EX. 4.

J. S. STEARNS LUMBER COMPANY, PLAINTIFF, v. CHARLES ASHMAN, DEFENDANT.	State of Wisconsin, in Circuit Court for Ashland County.

It is hereby stipulated by and between the parties to the above-entitled action that all of the burned timber upon the land described in the complaint herein, which for the purposes of preservation and conservation of the same shall be cut during the summer of 1911, may be cut by the plaintiff under the supervision of the superintendent in charge of the La Pointe Agency at Ashland, Wisconsin, in accordance with the regulations applicable to existing contracts, and that plaintiff will pay the defendant, if the latter shall by the judgment of the court in said action be held to be the owner of said land, the fair market value thereof at the time of cutting, to be fixed by the court in this action. Such price, however, shall not be less than seven ($7.00) dollars per thousand feet for white and Norway pine, four ($4.00) dollars per thousand feet for spruce, two ($2.00) dollars per thousand feet for tamarack, and one
73 ($1.00) dollar per thousand feet for balsam. And if the decision in this case shall not be had before July 1st, 1911, that plaintiff will pay into court for the benefit of the party who shall finally be entitled thereto the aforesaid price for the timber so cut, the scale of such timber to be determined in the manner provided in existing contracts for cutting other timber on the Bad River Indian Reservation.

Dated Feb. 7, 1911.

QUARLES, SPENCE & QUARLES,
Attorney for Plaintiff.
GEORGE H. GORDON,
Attorney for Defendant.

74 EX. 5.

J. S. STEARNS LUMBER COMPANY, PLAINTIFF, v. CHARLES ASHMAN, DEFENDANT.	State of Wiscon, in Circuit Court for Ashland County.

It is hereby stipulated by and between the parties to the above-entitled action that the stipulations entered into and dated February 7th, 1911, be amended so as to read as follows:

It is hereby stipulated by and between the parties to the above-entitled action that all of the burned timber upon the land described

in the complaint herein, which for the purposes of preservation and conservation of the same shall be cut during the summer of 1911, may be cut by the plaintiff under the supervision of the superintendent in charge of the La Pointe Agency at Ashland, Wisconsin, in accordance with the regulations applicable to existing contracts, and that plaintiff will pay the defendant, if the latter shall by the judgment of the court in said action be held to be the owner of said land, the fair market value thereof at the time of cutting, to be fixed by the court in this action. Such price, however, shall not be less than
seven ($7.00) dollars per thousand feet for white and Norway
75 pine, four ($4.00) dollars per thousand feet for spruce, two ($2.00) dollars per thousand feet for tamarack, and one ($1.00) dollar per thousand feet for balsam. And if the decision in this case shall not be had before July 1st, 1911, plaintiff will pay to S. W. Campbell, superintendent and special disbursing agent for the United States Government at Ashland, Wisconsin, for the benefit of the party who shall finally be entitled thereto the aforesaid price for the timber so cut, the scale of such timber to be determined in the manner provided in existing contracts for cutting other timber on the Bad River Indian Reservation.

Dated March 17th, 1911.

QUARLES, SPENCE & QUARLES,
Attorneys for Plaintiff.
GEORGE H. GORDON,
Attorney for Defendant.

76 Ex. 6.

J. S. STEARNS LUMBER COMPANY (A CORPORATION), plaintiff,
v.
CHARLES ASHMAN, DEFENDANT.
} State of Wisconsin, Circuit Court for Ashland County.

It is hereby stipulated, by and between the parties to the above-entitled action, that all of the burned timber upon the land described in the complaint herein, which, for the purposes of preservation and conservation of the same, should be cut during the summer of 1909, may be cut by the plaintiff under the supervision of the superintendent in charge of the La Pointe Agency at Ashland, Wisconsin, in accordance with the regulations applicable to existing contracts, and that the plaintiff will pay to the defendant, if the latter shall, by the judgment of the court in said action, be held to be the owner of said land, the fair market value thereof at the time of the cutting, to be fixed by the court in this action. Such price, however, shall not be less than eight dollars ($8.00) per thousand feet for white
and Norway pine, and that if a decision in this case shall not
77 be had before July 1st, 1910, the plaintiff will pay into court for the benefit of the party who shall be finally entitled thereto the sum of eight dollars ($8.00) per thousand feet for the timber so cut, the scale of such timber to be determined in the manner

provided in existing contracts for cutting other timber on the Bad River Indian Reservation.

Dated June 19th, 1909.

QUARLES, SPENCE & QUARLES,
Attorneys for Plaintiff.
GEORGE H. GORDON,
United States Attorney, Western District of Wisconsin,
Defendant's Attorney.

78 EX. 7.

J. S. STEARNS LUMBER COMPANY, PLAINTIFF, v. FRANK FISKE, DEFENDANT.	State of Wisconsin, in Circuit Court for Ashland County.

It is hereby stipulated, by and between the parties to the above-entitled action, that all of the burned timber upon the land described in the complaint herein, which, for the purposes of preservation and conservation of the same, shall be cut during the summer of 1911, may be cut by the plaintiff under the supervision of the superintendent in charge of the La Pointe Agency at Ashland, Wisconsin, in accordance with the regulations applicable to existing contracts, and that plaintiff will pay the defendant, if the latter shall, by the judgment of the court in said action, be held to be the owner of said land, the fair market value thereof at the time of the cutting, to be fixed by the court in this action. Such price, however, shall not be less than seven ($7.00) dollars per thousand feet for white and Norway pine, four ($4.00) dollars per thousand feet for spruce, two ($2.00) dollars per thousand feet for tamarack, and one
79 ($1.00) dollar per thousand feet for balsam; and if the decision in this case shall not be had before July 1st, 1911, that plaintiff will pay into court for the benefit of the party who shall finally be entitled thereto the aforesaid price for the timber so cut, the scale of such timber to be determined in the manner provided in existing contracts for cutting other timber on the Bad River Indian Reservation.

Dated Feb. 7, 1911.

QUARLES, SPENCE & QUARLES,
Attorney for Plaintiff.
GEORGE H. GORDON,
Attorney for Defendant.

80 EX. 8.

J. S. STEARNS LUMBER COMPANY, PLAINTIFF, v. FRANK FISKE, DEFENDANT.	State of Wisconsin, in Circuit Court for Ashland County.

It is hereby stipulated by and between the parties to the above-entitled action that the stipulations entered into and dated February 7th, 1911, be amended so as to read the follows:

It is hereby stipulated by and between the parties to the above-entitled action that all of the burned timber upon the land described

in the complaint herein, which for the purposes of preservation and conservation of the same shall be cut during the summer of 1911, may be cut by the plaintiff under the supervision of the superintendent in charge of the La Pointe Agency at Ashland, Wisconsin, in accordance with the regulations applicable to existing contracts, and that plaintiff will pay the defendant, if the latter shall by the judgment of the court in said action be held to be the owner of said land, the fair market value thereof at the time of cutting, to be fixed by the court in this action. Such price, however, shall not
81 be less than seven ($7.00) dollars per thousand feet for white and Norway pine, four ($4.00) dollars per thousand feet for spruce, two ($2.00) dollars per thousand feet for tamarack, and one ($1.00) dollar per thousand feet for balsam; and if the decision in this case shall not be had before July 1st, 1911, plaintiff will pay to S. W. Campbell, superintendent and special disbursing agent for the United States Government at Ashland, Wisconsin, for the benefit of the party who shall finally be entitled thereto the aforesaid price for the timber so cut, the scale of such timber to be determined in the manner provided in existing contracts for cutting other timber on the Bad River Indian Reservation.

Dated March 17, 1911.

QUARLES, SPENCE & QUARLES,
Attorneys for plaintiff.
GEORGE H. GORDON,
Attorney for defendant.

82 EX. 9.

J. S. STEARNS LUMBER COMPANY (A CORPORATION), plaintiff,
v.
FRANK FISH, DEFENDANT.

State of Wisconsin, Circuit Court for Ashland County.

It is hereby stipulated, by and between the parties to the above-entitled action, that all of the burned timber upon the land described in the complaint herein, which, for the purposes of preservation and conservation of the same, should be cut during the summer of 1909, may be cut by the plaintiff under the supervision of the superintendent in charge of the La Pointe Agency at Ashland, Wisconsin, in accordance with the regulations applicable to existing contracts, and that the plaintiff will pay to the defendant, if the latter shall, by the judgment of the court in said action, be held to be the owner of said land, the fair market value thereof at the time of the cutting, to be fixed by the court in this action. Such price, however, shall not be less than eight dollars ($8.00) per thousand feet for
83 white and Norway pine; and that if a decision in this case shall not be had before July 1st, 1910, the plaintiff will pay into court for the benefit of the party who shall be finally entitled thereto the sum of eight dollars ($8.00) per thousand feet for the timber so cut, the scale of such timber to be determined in the man-

ner provided in existing contracts for cutting other timber on the Bad River Indian Reservation.

Dated June 19, 1909.

QUARLES, SPENCE & QUARLES,
Attorneys for Plaintiff.

GEORGE H. GORDON,
United States Attorney, Western District of Wisconsin,
Defendant's Attorney.

84 EX. 10.

J. S. STEARNS LUMBER COMPANY, PLAINTIFF,
v.
MARY SERO, DEFENDANT.

State of Wisconsin, in Circuit Court for Ashland County.

It is hereby stipulated by and between the parties to the above-entitled action that all of the burned timber upon the land described in the complaint herein, which for the purposes of preservation and conservation of the same shall be cut during the summer of 1911, may be cut by the plaintiff under the supervision of the superintendent in charge of the La Pointe Agency at Ashland, Wisconsin, in accordance with the regulations applicable to existing contracts, and that plaintiff will pay the defendant, if the latter shall by the judgment of the court in said action be held to be the owner of said land, the fair market value thereof at the time of cutting, to be fixed by the court in this action. Such price, however, shall not be less than seven ($7.00) dollars per thousand feet for white and Norway pine, four ($4.00) dollars per thousand feet for spruce, two ($2.00) dollars per thousand feet for tamarack, and one ($1.00) dollar per thousand feet for balsam; and if the decision in
85 this case shall not be had before July 1st, 1911, that plaintiff will pay into court for the benefit of the party who shall finally be entitled thereto the aforesaid price for the timber so cut, the scale of such timber to be determined in the manner provided in existing contracts for cutting other timber on the Bad River Indian Reservation.

Dated Feb. 7, 1911.

QUARLES, SPENCE & QUARLES,
Attorney for Plaintiff.

GEORGE H. GORDON,
Attorney for Defendant.

86 EX. 11.

J. S. STEARNS LUMBER COMPANY, PLAINTIFF,
v.
MARY SERO, DEFENDANT.

State of Wisconsin, in Circuit Court for Ashland County.

It is hereby stipulated by and between the parties to the above-entitled action that the stipulations entered into and dated February 7th, 1911, be amended so as to read as follows:

It is hereby stipulated by and between the parties to the above-entitled action that all of the burned timber upon the land described

in the complaint herein, which for the purposes of preservation and conservation of the same shall be cut during the summer of 1911, may be cut by the plaintiff under the supervision of the superintendent in charge of the La Pointe Agency at Ashland, Wisconsin, in accordance with the regulations applicable to existing contracts, and that plaintiff will pay the defendant, if the latter shall by the judgment of the court in said action be held to be the owner of said land, the fair market value thereof at the time of cutting, to be fixed by the court in this action. Such price, however, shall not be
87 less than seven ($7.00) dollars per thousand feet for white and Norway pine, four ($4.00) dollars per thousand feet for spruce, two ($2.00) dollars per thousand feet for tamarack, and one ($1.00) dollar per thousand feet for balsam; and if the decision in this case shall not be had before July 1st, 1911, plaintiff will pay to S. W. Campbell, superintendent and special disbursing agent for the United States Government at Ashland, Wisconsin, for the benefit of the party who shall finally be entitled thereto, the aforesaid price for the timber so cut, the scale of such timber to be determined in the manner provided in existing contracts for cutting other timber on the Bad River Indian Reservation.

Dated March 17th, 1911.

QUARLES, SPENCE & QUARLES,
Attorneys for Plaintiff.
GEORGE H. GORDON,
Attorney for Defendant.

88 Ex. 12.

J. S. STEARNS LUMBER COMPANY (A CORPORATION), plaintiff,
v.
MARY SORO, DEFENDANT.

State of Wisconsin, Circuit Court for Ashland County.

It is hereby stipulated, by and between the parties to the above-entitled action, that all of the burned timber upon the land described in the complaint herein, which for the purposes of preservation and conservation of the same, should be cut during the summer of 1909, may be cut by the plaintiff under the supervision of the superintendent in charge of the La Pointe Agency at Ashland, Wisconsin, in accordance with the regulations applicable to existing contracts, and that the plaintiff will pay to the defendant, if the latter shall, by the judgment of the court in said action, be held to be the owner of said land, the fair market value thereof at the time of the cutting, to be fixed by the court in this action (such price, however, shall not be less than eight dollars ($8.00) per thousand feet for white
89 and Norway pine); and that if a decision in this case shall not be had before July 1st, 1910, the plaintiff will pay into court for the benefit of the party who shall be finally entitled thereto the sum of eight dollars ($8.00) per thousand feet for the timber so cut, the scale of such timber to be determined in the manner provided

in existing contracts for cutting timber on the Bad River Indian Reservation.

Dated June 19th, 1909.

QUARLES, SPENCE & QUARLES,
Attorneys for Plaintiff.
GEORGE H. GORDON,
United States Attorney, Western District of Wisconsin,
Defendant's Attorney.

90 EX. 13.

J. S. STEARNS LUMBER COMPANY, PLAINTIFF, *v.* NANCY HEADFLYER, DEFENDANT. | State of Wisconsin, in Circuit Court for Ashland County.

It is hereby stipulated by and between the parties to the above-entitled action that all of the burned timber upon the land described in the complaint herein, which for the purposes of preservation and conservation of the same shall be cut during the summer of 1911, may be cut by the plaintiff under the supervision of the superintendent in charge of the La Pointe Agency at Ashland, Wisconsin, in accordance with the regulations applicable to existing contracts, and that plaintiff will pay the defendant, if the latter shall by the judgment of the court in said action be held to be the owner of said land, the fair market value thereof at the time of cutting, to be fixed by the court in this action. Such price, however, shall not be less than seven ($7.00) dollars per thousand feet for white and Norway pine, four ($4.00) dollars per thousand feet for spruce, two ($2.00) dollars per thousand feet for tamarack, and one ($1.00) dollars per thousand feet for balsam. And if the decision in this case shall
91 not be had before July 1st, 1911, that plaintiff will pay into court for the benefit of the party who shall finally be entitled thereto the aforesaid prices for the timber so cut, the scale of such timber to be determined in the manner provided in existing contracts for cutting other timber on the Bad River Indian Reservation.

Dated Feb. 7, 1911.

QUARLES, SPENCE & QUARLES,
Attorneys for Plaintiff.
GEORGE H. GORDON,
Attorney for Defendant.

92 EX. 14.

J. S. STEARNS LUMBER COMPANY, PLAINTIFF, *v.* NANCY HEADFLYER, DEFENDANT. | State of Wisconsin, in Circuit Court for Ashland County.

It is hereby stipulated, by and between the parties to the above-entitled action, that the stipulations entered into and dated February 7th, 1911, be amended so as to read as follows:

It is hereby stipulated by and between the parties to the above-entitled action that all of the burned timber upon the land described

in the complaint herein, which for the purposes of preservation and conservation of the same shall be cut during the summer of 1911, may be cut by the plaintiff under the supervision of the superintendent in charge of the La Pointe Agency at Ashland, Wisconsin, in accordance with the regulations applicable to existing contracts, and that plaintiff will pay the defendant, if the latter shall, by the judgment of the court in said action, be held to be the owner of said land, the fair market value thereof at the time of cutting to be fixed by the
93 court in this action. Such price, however, shall not be less than seven ($7.00) dollars per thousand feet for white and Norway pine, four ($4.00) dollars per thousand feet for spruce, two ($2.00) dollars per thousand feet for tamarack, and one ($1.00) dollar per thousand feet for balsam: and if the decision in this case shall not be had before July 1st, 1911, plaintiff will pay to S. W. Campbell, superintendent and special disbursing agent for the United States Government at Ashland, Wisconsin, for the benefit of the party who shall finally be entitled thereto, the aforesaid price for the timber so cut, the scale of such timber to be determined in the manner provided in existing contracts for cutting other timber on the Bad River Indian Reservation.

Dated March 17th, 1911.

QUARLES, SPENCE & QUARLES,
Attorneys for Plaintiff.
GEORGE H. GORDON,
Attorney for Defendant.

94 **Ex. 15.**

J. S. STEARNS LUMBER COMPANY (A CORPORATION), plaintiff,
v.
NANCY HEADFLYER, DEFENDANT.
} State of Wisconsin Circuit Court for Ashland County.

It is hereby stipulated, by and between the parties to the above-entitled action, that all of the burned timber upon the land described in the complaint herein, which, for the purposes of preservation and conservation of the same, shall be cut during the summer of 1909, may be cut by the plaintiff under the supervision of the superintendent in charge of the La Pointe Agency at Ashland, Wisconsin, in accordance with the regulations applicable to existing contracts, and that the plaintiff will pay to the defendant, if the latter shall, by the judgment of the court in said action, be held to be the owner of said land, the fair market value thereof at the time of the cutting, to be fixed by the court in this action (such price, however, shall not be less than eight dollars ($8.00) per thousand feet for white and Norway pine); and that if a decision in this
95 case shall not be had before July 1st, 1910, the plaintiff will

pay into court for the benefit of the party who shall be finally entitled thereto the sum of eight dollars ($8.00) per thousand feet for the timber so cut, the scale of such timber to be determined in the manner provided in existing contracts for cutting other timber on the Bad River Indian Reservation.

Dated June 19th, 1909.

QUARL[illegible], SPENCE & QUARLES,
Attorneys for Plaintiff.

GEORGE H. GORDON,
United States Attorney, Western District of Wisconsin,
Defendant's Atty.

96

EX. 16.

J. S. STEARNS LUMBER COMPANY, PLAINTIFF, *v.* AMBROSE RABIDEAUX, DEFENDANT.	State of Wisconsin, in Circuit Court for Ashland County.

It is hereby stipulated by and between the parties to the above-entitled action that all of the burned timber upon the land described in the complaint herein, which for the purposes of preservation and conservation of the same shall be cut during the summer of 1911, may be cut by the plaintiff under the supervision of the superintendent in charge of the La Pointe Agency at Ashland, Wisconsin, in accordance with the regulations applicable to existing contracts, and that plaintiff will pay the defendant, if the latter shall by the judgment of the court in said action be held to be the owner of said land, the fair market value thereof at the time of cutting, to be fixed by the court in this action. Such price, however, shall not be less than seven ($7.00) dollars per thousand feet for white and Norway pine, four ($4.00) dollars per thousand feet for spruce, two ($2.00) dollars per thousand feet for tamarack, and one ($1.00)
97 dollar per thousand feet for balsam; and if the decision in this case shall not be had before July 1st, 1911, that plaintiff will pay into court for the benefit of the party who shall finally be entitled thereto the aforesaid price for the timber so cut, the scale of such timber to be determined in the manner provided in existing contracts for cutting other timber on the Bad River Indian Reservation.

Dated Feb. 7, 1911.

QUARLES, SPENCE & QUARLES,
Attorney for Plaintiff.

GEORGE H. GORDON,
Attorney for Defendant.

98 Ex. 17.

J. S. Stearns Lumber Company, plaintiff, *v.* Ambrose Rabideaux, defendant. | State of Wisconsin, in Circuit Court for Ashland County.

It is hereby stipulated by and between the parties to the above-entitled action that the stipulations entered into and dated February 7th, 1911, be amended so as to read as follows:

It is hereby stipulated by and between the parties to the above-entitled action that all of the burned timber upon the land described in the complaint herein, which for the purposes of preservation and conservation of the same shall be cut during the summer of 1911, may be cut by the plaintiff under the supervision of the superintendent in charge of the La Pointe Agency at Ashland, Wisconsin, in accordance with the regulations applicable to existing contracts, and that plaintiff will pay the defendant, if the latter shall by the judgment of the court in said action be held to be the owner of said land, the fair market value thereof at the time of cutting, to be

99 fixed by the court in this action. Such price, however, shall not be less than seven ($7.00) dollars per thousand feet for white and Norway pine, four ($4.00) dollars per thousand feet for spruce, two ($2.00) dollars per thousand feet for tamarack, and one ($1.00) dollar per thousand feet for balsam. And if the decision in this case shall not be had before July 1st, 1911, plaintiff will pay to S. W. Campbell, superintendent and special disbursing agent for the United States Government at Ashland, Wisconsin, for the benefit of the party who shall finally be entitled thereto the aforesaid price for the timber so cut, the scale of such timber to be determined in the manner provided in existing contracts for cutting other timber on the Bad River Indian Reservation.

Dated March 17, 1911.

Quarles, Spence & Quarles,
Attorney for Plaintiff.
George H. Gordon,
Attorney for Defendant.

100 Ex. 18.

J. S. Stearns Lumber Company (a corporation), plaintiff, *v.* Ambrose Rabideaux, defendant. | State of Wisconsin, Circuit Court for Ashland County.

It is hereby stipulated by and between the parties to the above-entitled action that all of the burned timber upon the land described in the complaint herein which, for the purposes of preservation and

conservation of the same, should be cut, during the summer of 1909, may be cut by the plaintiff under the supervision of the superintendent in charge of the La Pointe Agency at Ashland, Wisconsin, in accordance with the regulations applicable to existing contracts, and that the plaintiff will pay to the defendant if the latter shall, by the judgment of the court in said action, be held to be the owner of said land, the fair market value thereof at the time of the cutting, to be fixed by the court in this action. Such price, however, shall not be less than eight dollars ($8.00) per thousand feet for white and Norway pine; and that if the decision in this case shall not be
101 had before July 1st, 1910, the plaintiff will pay into court for the benefit of the party who shall be finally entitled thereto the sum of eight dollars ($8.00) per thousand feet for the timber so cut, the scale of such timber to be determined in the manner provided in existing contracts for cutting other timber on the Bad River Indian Reservation.

Dated June 19th, 1909.

QUARLES, SPENCE & QUARLES,
Attorneys for Plaintiff.

GEORGE H. GORDON,
United States Attorney Western District of Wisconsin,
Defendant's Attorney.

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Ex. 19.

J. S. STEARNS LUMBER COMPANY, PLAINTIFF, *v.* JOSEPH CONNORS, SR., DEFENDANT.	State of Wisconsin, in Circuit Court for Ashland County.

It is hereby stipulated by and between the parties to the above-entitled action that all of the burned timber upon the land described in the complaint herein which, for the purposes of preservation and conservation of the same, shall be cut during the summer of 1911, may be cut by the plaintiff under the supervision of the superintendent in charge of the La Pointe Agency at Ashland, Wisconsin, in accordance with the regulations applicable to existing contracts, and that plaintiff will pay the defendant, if the latter shall by the judgment of the court in said action be held to be the owner of said land, the fair market value thereof at the time of cutting, to be fixed by the court in this action. Such price, however, shall not be less than seven ($7.00) dollars per thousand feet for white and Norway pine, four ($4.00) dollars per thousand feet for spruce, two ($2.00) dollars per thousand feet for tamarack, and one ($1.00) dollar per thousand feet for balsam. And if the decision in
103 this case shall not be had before July 1st, 1911, that plaintiff will pay into court for the benefit of the party who shall finally

be entitled thereto the aforesaid price for the timber so cut, the scale of such timber to be determined in the manner provided in existing contracts for cutting other timber on the Bad River Indian Reservation.

Dated Feb. 7, 1911.

QUARLES, SPENCE & QUARLES,
Attorneys for Plaintiff.
GEORGE H. GORDON,
Attorney for Defendant.

104 EX. 20.

J. S. STEARNS LUMBER COMPANY, PLAINTIFF, *v.* JOSEPH CONNORS, SR., DEFENDANT. | State of Wisconsin, in Circuit Court for Ashland County.

It is hereby stipulated by and between the parties to the above-entitled action that the stipulations entered into and dated February 7th, 1911, be amended so as to read as follows:

It is hereby stipulated by and between the parties to the above-entitled action that all of the burned timber upon the land described in the complaint herein which, for the purposes of preservation and conservation of the same, shall be cut during the summer of 1911, may be cut by the plaintiff under the supervision of the superintendent in charge of the La Pointe Agency at Ashland, Wisconsin, in accordance with the regulations applicable to existing contracts, and that plaintiff will pay the defendant, if the latter shall by the judgment of the court in said action be held to be the owner of said land, the fair market value thereof at the time of cutting, to

105 be fixed by the court in this action. Such price, however, shall not be less than seven ($7.00) dollars per thousand feet for white and Norway pine, four ($4.00) dollars per thousand feet for spruce, two ($2.00) dollars per thousand feet for tamarack, and one ($1.00) dollar per thousand feet for balsam; and if the decision in this case shall not be had before July 1st, 1911, plaintiff will pay to S. W. Campbell, superintendent and special disbursing agent for the United States Government at Ashland, Wisconsin, for the benefit of the party who shall finally be entitled thereto, the aforesaid price for the timber so cut, the scale of such timber to be determined in the manner provided in existing contracts for cutting other timber on the Bad River Indian Reservation.

Dated March 17th, 1911.

QUARLES, SPENCE & QUARLES,
Attorneys for Plaintiff.
GEORGE H. GORDON,
Attorney for Defendant.

106 Ex. 21.

J. S. Stearns Lumber Company (a corporation), plaintiff,
v.
Joseph Connors, sr., defendant.
} State of Wisconsin, Circuit Court for Ashland County.

It is hereby stipulated by and between the parties to the above-entitled action that all of the burned timber upon the land described in the complaint herein which, for the purpose of preservation and conservation of the same, should be cut during the summer of 1909, may be cut by plaintiff under the supervision of the superintendent in charge of the La Pointe Agency at Ashland, Wisconsin, in accordance with the regulations applicable to existing contracts, and that the plaintiff will pay to the defendant, if the latter shall by the judgment of the court in said action be held to be the owner of said land, the fair market value thereof at the time of the cutting, to be fixed by the court in this action; such price, however, shall not be less than eight dollars ($8.00) per thousand feet for white and Norway pine; and that, if a decision in this case shall not be had before July 1st, 1910, the plaintiff will pay into court for the benefit
107 of the party who shall be finally entitled thereto the sum of eight ($8.00) dollars per thousand feet for the timber so cut, the scale of such timber to be determined in the manner provided in existing contracts for cutting other timber on the Bad River Indian Reservation.

Dated June 19, 1909.

Quarles, Spence & Quarles,
Attorney for Defendant.
George H. Gordon,
United States Attorney, Western District of Wisconsin,
Defendant's Atty.

108 (Office of Indian Affairs. Received Feb. 9, 1914. 14118.)

Ex. 22.

Report of timber cut on sections 16, Bad River Reservation, Wisconsin, showing amount removed, specie, price, amount, and amount deposited in bonded bank to credit of description.

Dated February 6th, 1914.

109 SE. NE. 16, 46, 3. No. 237.

1909.			
Nov. 30.	By timber		$1,218.49
30.	To scale	$23.22	
1910.			
Feby. 28.	By timber		3,801.25
28.	To scale	73.16	
Mar. 31.	By timber		41.45
31.	To scale	.78	
April 30.	By timber		8.76
30.	To scale	.17	
June 4.	To check #25621, Nat'l German Am. Bank, Wausau, Wisconsin	4,972.62	
1912.			
Jany. 31.	By timber		729.60
31.	To scale	16.16	
31.	By timber		866.47
31.	To scale	19.20	
June 8.	To check #25905, Eau Claire Nat'l Bank, Eau Claire, Wis.	1,560.71	
Sept. 30.	By timber		4.57
30.	To scale	.12	
Dec. 3.	To check #25984, Nat'l German Am. Bank, Wausau, Wis.	4.45	
		6,670.59	6,670.59

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White pine	261,800	$8.00	$2,094.40
Norway	355,460	8.00	2,843.68
Hemlock	970	1.50	1.46
White pine	136,285	7.00	953.99
Norway	88,590	7.00	620.13
Spruce	1,835	4.00	7.34
Tamarack	9,375	2.00	18.75
Balsam	250	1.00	.25
Spruce	6,870	5.50	37.79
Tamarack	22,570	4.00	90.28
Balsam	1,260	2.00	2.52
Totals	885,265		6,670.59

110 SE. SE. 16, 46, 3. #241.

1909.			
Dec. 31.	By timber		$2,726.45
31.	To scale	$55.09	
1910.			
Jany. 31.	By timber		3,497.18
31.	To scale	68.08	
March 31.	By timber		75.95
31.	To scale	1.47	
April 30.	By timber		2.87
30.	To scale	.08	
Oct. 5.	To check #25663 Nat'l Bank of Wapun, Wisconsin	6,177.73	
1911.			
Feby. 28.	By timber		294.56
28.	To scale	6.76	
1912.			
Jany. 24.	To check #25820 First Nat'l Bank, Grand Rapids, Wisc.	287.80	
		6,597.01	6,597.01

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White pine	351,280	$8.00	$2,810.24
Norway	391,000	8.00	3,128.00
Hemlock	400	1.50	.61
White pine	31,140	7.00	217.98
Norway	9,055	7.00	63.38
Spruce	2,400	4.00	9.60
Tamarack	1,165	2.00	2.33
Balsam	1,270	1.00	1.27
Spruce	10,330	5.50	56.81
Tamarack	74,880	4.00	299.52
Balsam	3,260	2.00	6.52
Cedar	250	3.00	.75
Totals	876,430	.....	6,597.01

111 SW. SW. 16, 46, 3. #304.

1910.			
Dec. 30.	By timber		$1,592.53
30.	To scale	$36.23	
1911.			
Feby. 28.	By timber		299.90
28.	To scale	7.55	
April 30.	By timber		.36
30.	To scale	.02	
Dec. 7.	To check #25806, Nat'l Exchange Bank, Waukesha, Wisc	1,848.99	
1912.			
Jany. 31.	By timber		725.62
31.	To scale	17.48	
June 5.	To check #25896 Nat'l Exchange Bank, Waukesha, Wis	708.14	
May 31.	By timber		.88
31.	To scale	.06	
Dec. 3.	To check #25981 Nat'l Exchange Bank, Wauhesha, Wis	.82	
		2,619.29	2,619.29

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White pine	242,265	$7.00	$1,695.85
Norway	116,245	7.00	813.72
Hemlock	225	1.50	.34
Spruce	4,870	4.00	19.48
Tamarack	44,655	2.00	89.31
Balsam	590	1.00	.59
Totals	408,850	.....	2,619.29

112 NE. NE. 16, 46, 3. #303.

1910.				
Nov.	30.	By timber		$61.17
	30.	To scale	$1.48	
1911.				
Mar.	31.	By timber		64.00
	31.	To scale	1.42	
April	30.	By timber		.91
	30.	To scale	.03	
Nov.	30.	By timber		698.69
	30.	To scale	16.20	
1912.				
Jany.	24.	To check #25820, First Nat'l Bank, Grand Rapids, Wisc	805.64	
	31.	By timber		1,021.31
	31.	To scale	22.42	
	31.	By timber		1,060.71
	31.	To scale	23.46	
Mar.	5.	To check #25855, First Nat'l Bank, Madison, Wisconsin	2,036.14	
Sept.	30.	By timber		9.52
	30.	To scale	.23	
Dec.	4.	To check #25989, First Nat'l Bank, Madison, Wisconsin	9.29	
			2,916.31	2,916.31

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White pine	216,375	$7.00	$1,514.62
Norway	191,735	7.00	1,342.14
Hemlock	620	1.50	.93
Spruce	3,290	4.00	13.30
Tamarack	22,560	2.00	44.98
Balsam	340	1.00	.34
Totals	434,920	.....	2,916.31

113 SW. SE. 16, 46, 3. #243.

1909.				
Dec.	31.	By timber		$895.98
	31.	To scale	$17.76	
1910.				
Mar.	31.	By timber		719.77
	31.	To scale	14.87	
April	30.	By timber		3.20
	30.	To scale	.08	
Oct.	5.	To check #25663, Nat'l Bank of Waupun, Wisconsin	1,586.24	
1911.				
Feb.	28.	By timber		313.54
	28.	To scale	7.20	
1912.				
Jan.	24.	To check #25820 First Nat'l Bank, Grand Rapids, Wisc	306.34	
	31.	By timber		693.04
	31.	To scale	17.13	
June	8.	To check #25905 Eau Claire Nat'l Bank, Eau Claire, Wisc	675.91	
May	31.	By timber		.82
	31.	To scale	.03	
Dec.	4.	To check #25986 First Nat'l Bank, Grand Rapids, Wisc	.79	
			2,626.35	2,626.35

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White Pine	149,040	$8.00	$1,192.32
Norway	37,540	8.00	300.32
Hemlock	30	1.50	.05
White Pine	99,955	7.00	699.68
Norway	35,835	7.00	250.84
Spruce	2,135	4.00	8.54
Tamarack	23,925	2.00	47.85
Balsam	480	1.00	.48
Spruce	2,430	5.50	13.37
Tamarack	27,780	4.00	111.12
Balsam	890	2.00	1.78
Totals	380,040	.....	2,626.35

114 NE. NW. 16, 47, 2. #27.

1906.			
Nov. 3.	By timber		$8.96
3.	To scale	$0.17	
1912.			
Dec. 4.	To check 25990 Commercial Nat'l Bank, Madison, Wisc	8.79	
		8.96	8.96

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White pine	1,120	$8.00	$8.96

115 NE. SE. 16, 47, 2. #233.

1909.			
Oct. 30.	By timber		$140.28
30.	To scale	$2.69	
1910.			
Oct. 5.	To check #25665 First Nat'l Bank, Wausau, Wisconsin	137.59	
		140.28	140.28

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White pine	16,140	$8.00	$129.12
Norway	1,170	8.00	9.36
Hemlock	200	1.50	.30
Spruce	90	5.50	.50
Tamarack	120	4.00	.48
Balsam	50	2.00	.10
Cedar	140	3.00	.42
	17,910	.....	140.28

116 SW. NW. 16, 46, 3. #312.

1910.				
Dec.	31.	By timber		$778.09
	31.	To scale	$17.27	
1911.				
Jany.	31.	By timber		1,954.94
	31.	To scale	45.58	
Feby.	28.	By timber		150.32
	28.	To scale	3.29	
Mar.	31.	By timber		586.62
	31.	To scale	14.26	
April	30.	By timber		2.16
	30.	To scale	.06	
Dec.	7.	To check #25806 Nat'l Exchange Bank, Waukesha, Wisconsin	3,391.67	
1912.				
Jany.	31.	By timber		341.12
	31.	To scale	8.08	
Mar.	5.	To check #25857 City Nat'l Bank, Duluth, Minn.	333.04	
May	31.	By timber		1.15
	31.	To scale	.06	
Sept.	16.	To check #25937 City Nat'l Bank, Duluth, Minn.	1.09	
			3,814.40	3,814.40

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White pine	405,820	$7.00	$2,840.73
Norway	118,115	7.00	826.81
Hemlock	260	1.50	.39
Ash	70	2.00	.14
Spruce	7,075	4.00	28.30
Tamarack	58,825	2.00	117.65
Balsam	380	1.00	.38
Total	590,545	.....	3,814.40

117 SW. SE. 16, 47, 2. #205.

1909.				
July	31.	By timber		$29.50
	31.	To scale	$0.57	
Sept.	30.	By timber		2,631.20
	30.	To scale	50.62	
1910.				
Feby.	28.	By timber		2,352.47
	28.	To scale	44.77	
Nov.	2.	To check #25678 First Nat'l Bank, Antogo, Wisconsin	4,917.21	
			5,013.17	5,013.17

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White Pine	467,630	$8.00	$3,741.04
Norway	146,770	8.00	1,174.16
Hemlock	6,160	1.50	9.24
Basswood	100	4.00	.40
Elm	1,540	2.00	3.08
Spruce	12,550	5.50	69.03
Tamarack	3,060	4.00	12.24
Balsam	1,540	2.00	3.08
Cedar	300	3.00	.90
Total	639,650	.....	5,013.17

118 NW. NE. 16, 46, 3. #313.

1910.			
Dec. 31.	By timber		$670.29
31.	To scale	$15.63	
1911.			
Feby. 28.	By timber		1,330.85
28.	To scale	30.02	
Mar. 31.	By timber		915.42
31.	To scale	21.72	
April 30.	By timber		9.46
30.	To scale	.24	
Dec. 7.	To check #25806 Nat'l Exchange Bank, Waukesha, Wisconsin	2,858.41	
		2,926.02	2,926.02

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White pine	320,770	$7.00	$2,245.39
Norway	82,320	7.00	576.24
Hemlock	40	1.50	.06
Spruce	7,050	4.00	28.20
Tamarack	35,640	2.00	71.28
Balsam	4,845	1.00	4.85
Total	450,665	.....	2,926.02

119 SE. NW. 16, 47, 2. #372.

1911.			
May 31.	By timber		$12.39
31.	To scale	$0.27	
1912.			
Mar. 5.	To check #25855, First Nat'l Bank, Madison, Wisconsin	12.12	
		12.39	12.39

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White pine	1,770	$7.00	$12.39

120 SW. SE. 16, 48, 3. #369.

1911.			
April 30. By timber			$0.57
30. To scale	$0.02		
1912.			
Dec. 4. To check #25986, First Nat'l Bank, Grand Rapids, Wisc	.55		
	.57		.57

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White pine	30	$7.00	$0.21
Norway	30	7.00	.21
Ash	30	2.00	.06
Tamarack	30	2.00	.06
Balsam	30	1.00	.03
Totals	150		.57

121 SE. SE. 16, 48, 3. #370.

1911.			
April 30. By timber			$0.91
30. To scale	$0.02		
1912.			
Dec. 4. To check #25986, First Nat'l Bank, Grand Rapids, Wisconsin.	.89		
	.91		.91

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White pine	80	$7.00	$0.56
Norway	50	7.00	.35
Totals	130		.91

122 NE. SE. 16, 47, 3. #276.

1910.			
Mar. 31. By timber			$105.80
31. To scale	$2.00		
Dec. 21. To check #25694, First Nat'l Bank, Antigo, Wisconsin	103.80		
	105.80		105.80

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White pine	10,010	$8.00	$80.08
Norway	3,135	8.00	25.08
Tamarack	160	4.00	.64
Totals	13,305	.....	105.80

123 SE. SE. 16, 47, 3. #277.

1910.			
Mar. 31.	By timber		$155.79
31.	To scale	$2.97	
Dec. 21.	To check #25694, First Nat'l Bank, Antigo, Wisconsin	152.82	
		155.79	155.79

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White pine	17,945	$8.00	$143.56
Norway	960	8.00	7.68
Spruce	770	5.50	4.23
Tamarack	30	4.00	.12
Balsam	100	2.00	.20
Totals	19,805	.....	155.79

124 NE. NW. 16, 47, 3. #415.

1912.			
Mar. 31.	By timber		$3.43
31.	To scale	$0.20	
Dec. 3.	To check #25985, First Nat'l Bank, Wausau, Wisconsin	3.23	
		3.43	3.43

Timber scale.

Specie.	Feet.	Price per M.	Amount.
Elm	360	$2.00	$0.72
Balsam	100	1.00	.10
Cedar	870	3.00	2.61
	1,330	.....	3.43

125 NW. SE. 16, 47, 3. #416.

1912.				
Mar. 31.	By timber			$68.39
31.	To scale		$1.47	
June 6.	To check #25903 Eau Claire Nat'l Bank, Eau Claire, Wisconsin		66.92	
			68.39	68.39

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White pine	1,320	$7.00	$9.24
Norway	8,450	7.00	59.15
Totals	9,770	.....	68.39

126 NE. SW. 16, 46, 3. #353.

1911.				
Mar. 31.	By timber			$34.90
31.	To scale		$0.82	
April 30.	By timber			1.33
30.	To scale		.03	
1912.				
Mar. 5.	To check #25854 First Nat'l Bank, Marshfield, Wisconsin		35.38	
			36.23	36.23

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White pine	4,270	$7.00	$29.89
Norway	710	7.00	4.97
Spruce	90	4.00	.36
Tamarack	440	2.00	.88
Balsam	130	1.00	.13
Totals	5,640	.....	36.23

127 NE. NE. 16, 47, 3. #376.

1911.				
Nov. 30.	By timber			$1,665.20
30.	To scale		$36.90	
1912.				
Jany. 28.	To check #25820 First Nat'l Bank, Grand Rapids, Wisc.		1,628.30	
1911.				
Dec. 31.	By timber			575.97
31.	To scale		12.57	
1912.				
Feby. 7.	To check #25829 First Nat'l Bank, Wausau, Wisc		563.40	
Jany. 31.	By timber			539.45
31.	To scale		12.07	
Mar. 5.	To check #25857 City Nat'l Bank, Duluth, Minn		527.38	
			2,780.62	2,780.62

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White pine	187, 455	$7.00	$1, 312. 18
Norway	203, 110	7. 00	1, 422. 11
Hemlock	425	1. 50	. 63
Spruce	3, 675	4. 00	14. 70
Tamarack	15, 330	2. 00	30. 66
Balsam	190	1. 00	. 19
Cedar	50	3. 00	. 15
	410, 235	.....	2, 780. 62

128 SE. SW. 16, 46, 3. #392.

1912.				
Jany. 31.	By timber			$111. 26
31.	To scale		$2. 55	
May 31.	By timber			. 37
31.	To scale		. 03	
Dec. 3.	To check #25979, United States Nat'l Bank, Superior, Wisc.		109. 05	
			111. 63	111. 63

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White pine	8, 985	$7. 00	$62. 89
Norway	6, 490	7. 00	45. 43
Spruce	30	4. 00	. 12
Tamarack	1, 575	2. 00	3. 15
Balsam	40	1. 00	. 04
	17, 120	.....	111. 63

129 NW. SW. 16, 46, 3. #307.

1910.				
Dec. 31.	By timber			$2, 057. 94
31.	To scale		$47. 00	
1911.				
Feby. 28.	By timber			522. 09
28.	To scale		12. 20	
Mar. 31.	By timber			2. 52
31.	To scale		. 09	
April 30.	By timber			2. 38
30.	To scale		. 05	
Dec. 7.	To check #25806, Nat'l Exchange Bank, Waukesha, Wisconsin		2, 525. 59	
1912.				
Jany. 31.	By timber			631. 10
31.	To scale		14. 25	
March 5.	To check #25855, First Nat'l Bank, Madison, Wisconsin		616. 85	
			3, 216. 03	3, 216. 03

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White pine	296,085	$7.00	$2,072.59
Norway	149,675	7.00	1,047.73
Hemlock	235	1.50	.35
Spruce	3,315	4.00	13.26
Tamarack	40,790	2.00	81.58
Balsam	520	1.00	.52
	490,620	.....	3,216.03

130 NW. NW. 16, 46, 3. # 306.

1910.			
Dec. 31. By timber			$1,536.36
31. To scale		$35.86	
1911.			
Jany. 31. By timber			3,344.28
31. To scale		78.03	
Feby. 28. By timber			360.47
28. To scale		7.78	
April 30. By timber			3.50
30. To scale		.11	
Dec. 7. To check #25806, Nat'l Exchange Bank, Waukesha, Wisconsin		5,122.83	
		5,244.61	5,244.61

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White pine	546,640	$7.00	$3,826.49
Norway	173,800	7.00	1,216.60
Hemlock	575	1.50	.86
Ash	110	2.00	.22
Spruce	90,605	4.00	38.42
Tamarack	80,970	2.00	161.94
Balsam	85	.....	.08
	811,785	.....	5,244.61

131 SE. SE. 16, 47, 2. # 228.

1909.			
Sept. 30. By timber			$2,365.71
30. To scale		$45.45	
Oct. 30. By timber			3,047.70
30. To scale		58.36	
Dec. 31. By timber			1,746.01
31. To scale		33.25	
1910.			
Oct. 5. To check # 25663 Nat'l Bank of Waupun, Wisconsin		7,022.36	
		7,159.42	7,159.42

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White pine	691,510	$8.00	$5,532.08
Norway	181,310	8.00	1,450.48
Hemlock	8,850	1.50	13.26
Basswood	100	4.00	.40
Spruce	26,770	5.50	147.23
Tamarack	2,620	4.00	10.48
Balsam	2,130	2.00	4.26
Cedar	410	3.00	1.23
	913,680	.....	7,159.42

132 SW. SW. 16, 47, 2. # 266.

1910.			
Feby. 28.	By timber		$4,326.75
28.	To scale	$82.21	
April 30.	By timber		5.72
30.	To scale	.11	
June 4.	To check # 25621 Nat'l German Am. Bank, Wausau, Wisconsin	4,250.15	
		4,332.47	4,332.47

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White pine	325,760	$8.00	$2,606.08
Norway	205,940	8.00	1,647.52
Hemlock	290	1.50	.44
Basswood	360	4.00	1.44
Ash	100	2.00	.20
Spruce	8,730	5.50	48.01
Tamarack	6,770	4.00	27.08
Balsam	850	2.00	1.70
	548,800	.....	4,332.47

133 SE. SW. 16, 47, 2. # 265–419.

1910.			
Feby. 28.	By timber		$3,640.30
28.	To scale	$69.25	
April 30.	By timber		8.90
30.	To scale	.18	
June 4.	To check # 25621 Nat'l German Am. Bank, Wausau, Wisconsin	3,579.77	
1912.			
July 31.	By timber		2.52
31.	To scale	.05	
Dec. 3.	To check # 25984 Nat'l German Am. Bank, Wausau, Wisconsin	2.47	
		3,651.72	3,651.72

Timber scale.

Specie.	Feet.	Price Per M.	Amount.
White pine	382,590	$8.00	$3,060.72
Norway	64,590	8.00	516.72
Hemlock	380	1.50	.57
White pine	360	7.00	2.52
Spruce	10,040	5.50	55.23
Tamarack	2,760	4.00	11.04
Balsam	2,460	2.00	4.92
	463,180	.....	3,651.72

134 NE. SE. 16, 46, 3. #238.

1909.			
Nov. 30. By timber			$1,189.55
30. To scale		$23.02	
1910.			
Feb. 28. By timber			3,878.85
28. To scale		77.68	
Mar. 31. By timber			1,624.24
31. To scale		32.20	
Apr. 30. By timber			12.86
30. To scale		.27	
June 4. To check #25621 Nat'l German Am. Bank, Wausau, Wisconsin		6,572.33	
		6,705.50	6,705.50

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White pine	437,000	$8.00	$3,496.00
Norway	350,440	8.00	2,803.52
Hemlock	270	1.50	.41
Spruce	7,290	5.50	40.10
Tamarack	89,980	4.00	359.92
Balsam	2,670	2.00	5.34
Cedar	70	3.00	.21
	887,720	.....	6,705.50

135 SW. NE. 16, 47, 3. #378.

1911.			
Nov. 30. By timber			$1,189.07
30. To scale		$25.51	
1912.			
Jan. 24. To check #25820 First Nat'l Bank, Grand Rapids, Wisc		1,163.56	
1911.			668.61
Dec. 31. By timber			
31. To scale		14.35	

1912.				
Feb. 7.	To check #25829 First Nat'l Bank, Wausau, Wisconsin.		$654.28	
Jan. 31.	By timber			$517.82
31.	To scale		11.14	
June 6.	To check #25905 Eau Claire Nat'l Bank, Eau Claire, Wisc		506.68	
May 31.	By timber			4.13
31.	To scale		.09	
Dec. 3.	To check #25985 First Nat'l Bank, Wausau, Wisconsin.		4.04	
			2,379.63	2,379.63

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White pine	80,275	$7.00	$561.92
Norway	259,140	7.00	1,813.97
Hemlock	95	1.50	.15
Spruce	650	4.00	2.60
Tamarack	310	2.00	.62
Cedar	125	3.00	.37
	340,595	.....	2,379.63

136 SE. NE. 16, 47, 3. #379.

1911.				
Nov. 30.	By timber			$566.12
30.	To scale		$12.43	
1912.				
Jany. 24.	To check #25821 First Nat'l Bank, Grand Rapids, Wisc.		553.69	
31.	By timber			995.00
31.	To scale		21.50	
June 8.	To check #25903 Eau Claire Nat'l Bank, Eau Claire, Wisconsin		708.14	
May 31.	By timber			9.46
31.	To scale		.22	
Sept. 16.	To check #25939 United States Nat'l Bank, Superior, Wisconsin		274.60	
			1,570.58	1,570.58

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White pine	108,640	$7.00	$760.48
Norway	113,925	7.00	797.47
Hemlock	180	1.50	.26
Spruce	1,180	4.00	4.72
Tamarack	3,545	2.00	7.09
Balsam	20	1.00	.02
Cedar	180	3.00	.54
	227,670	.....	1,570.58

137 NW. SE. 16, 47, 2. #234.

1909.			
Oct. 30. By timber			$79.05
30. To scale		$1.53	
1910.			
Oct. 5. To check #25665 First Nat'l Bank, Wausau, Wisconsin		77.52	
May 31. By timber			4.20
31. To scale		.09	
Dec. 12. To check #25810 First Nat'l Bank, Wausau, Wisconsin		4.11	
		83.25	83.25

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White pine	8,770	$8.00	$70.16
Norway	700	8.00	5.60
Hemlock	50	1.50	.07
White pine	440	7.00	3.08
Norway	160	7.00	1.12
Spruce	440	5.50	2.42
Tamarack	200	4.00	.80
	10,760	.....	83.25

138 NW. NE. 16, 47, 3. #377.

1911.			
Nov. 30. By timber			$1,086.74
30. To scale		$23.34	
1912.			
Jany. 24. To check #25820 First Nat'l Bank, Grand Rapids, Wisconsin		1,063.40	
Feby. 29. By timber			937.75
29. To scale		20.21	
June 6. To check #25905 Eau Claire Nat'l Bank, Eau Claire, Wisconsin		917.54	
		2,024.49	2,024.49

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White pine	69,385	$7.00	$485.69
Norway	219,140	7.00	1,533.97
Hemlock	80	1.50	.12
Spruce	610	4.00	2.44
Tamarack	1,080	2.00	2.16
Balsam	20	1.00	.02
Cedar	30	3.00	.09
	290,345	.....	2,024.49

139 NE. NW. 16, 46, 3. #320.

1910.				
Dec.	31.	By timber		$730.81
	31.	To scale	$17.01	
1911.				
Feby.	28.	By timber		4,535.18
	28.	To scale	99.58	
March	31.	By timber		61.02
	31.	To scale	1.31	
April	30.	By timber		15.24
	30.	To scale	.21	
Dec.	7.	To check #25806 Nat'l Exchange Bank, Waukesha, Wisconsin	5,224.14	
1912.				
Jany.	31.	By timber		945.04
	31.	To scale	20.65	
March	5.	To check #25854 First Nat'l Bank, Marshfield, Wisconsin	924.39	
May	31.	By timber		.56
	31.	To scale	.02	
Dec.	3.	To check #25981 Nat'l Exchange Bank, Waukesha, Wisconsin	.54	
			6,287.85	6,287.85

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White pine	621,650	$7.00	$4,351.55
Norway	263,210	7.00	1,842.47
Hemlock	195	1.50	.29
Oak	590	6.00	3.54
Spruce	4,655	4.00	18.62
Tamarack	35,570	2.00	71.14
Balsam	240	1.00	.24
	926,110	.....	6,287.85

140 SE. NW. 16, 46, 3. #352.

1911.				
March	31.	By timber		$519.00
	31.	To scale	$11.63	
April	30.	By timber	1.19	
		To scale	.05	
Dec.	7.	To check #25806 Nat'l Exchange Bank, Waukesha, Wisconsin	508.51	
1912.				
Jany.	31.	By timber		336.21
	31.	To scale	7.28	
March	5.	To check #25855 First Nat'l Bank, Madison, Wisconsin	328.93	
May	31.	By timber		.84
	31.	To scale	.02	
Dec.	3.	To check #25981 Nat'l Exchange Bank, Waukesha, Wisconsin	.82	
			857.24	857.24

Timber scale.

Specie.	Feet.	Price per M.	Amount.
White pine	87,215	$7.00	$610.50
Norway	33,270	7.00	232.89
Hemlock	40	1.50	.06
Spruce	1,125	4.00	4.50
Tamarack	4,540	2.00	9.08
Balsam	205	1.00	.21
	126,395	.....	857.24

Endorsed: No. 28 B–C. Dk. In the District Court of the United States, for the Western District of Wisconsin. The United States of America, complainant, vs. J. S. Stearns Lumber Company, defendant. Filed Jul. 28, 1914. Stipulations for case agreed. F. W. Oakley, clerk.

141 Afterwards—to wit, Feb. 20, 1915—filed amendment to answer, as follows:

In the District Court of the United States for the Western District of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANT,
v.
J. S. STEARNS LUMBER COMPANY, DEFENDANT. } In Equity.

Amendment to answer of the defendant heretofore filed in the above-entitled cause.

The defendant, J. S. Stearns Lumber Company, by leave of court first had and obtained amends its said answer heretofore filed herein, as follows:

This defendant shows that since the filing of the original answer herein it has been stipulated and agreed by and between the parties hereto by stipulation heretofore filed in the above-entitled cause as follows, to-wit:

"That, whereas the defendant herein has instituted suits in the Circuit Court of the county of Ashland, in the State of Wisconsin, against William Ashman, Charles Ashman, Frank Fisk, Mary Sero, Nancy Headflyer, Ambrose Robideaux, and Joseph Connors, senior, respectively, alleging it to be the owner of the land described in the complaints in the said several actions, and asking for the removal of cloud from its title thereto, copies of which said complaints, showing the dates of commencement of said actions, are hereto attached and made a part hereof as Exhibits "F" to "L," inclusive; and, whereas, certain stipulations were entered into in said actions, true copies of which are hereto attached and made a

part hereof as Exhibits "1 to 21," inclusive; and, whereas,
142 it has been agreed by and between the parties hereto that said J. S. Stearns Lumber Company will at once dismiss said actions heretofore instituted in said Circuit Court of Ashland County, Wisconsin; and, whereas, under the said stipulations the J. S. Stearns Lumber Company has cut certain timber upon portions of the land covered by said stipulations, a true statement thereof, showing the amount removed, the specie, and amount or amounts deposited with the Superintendent of Indian Schools of the La Pointe Reservation for the benefit of the party who shall finally be entitled thereto, being hereto attached marked Exhibit "22": It is hereby stipulated and agreed by and between the parties hereto that the stipulations entered into by and between the J. S. Stearns Lumber Company, defendant herein, and the several parties against whom suit was, by said defendant herein, instituted in the Circuit Court of Ashland County, shall be treated and considered as stipulations entered into in this cause by and between the parties to this action, with the same force and effect as if they had been entered into in this action between the parties hereto, and that the allegations of the complaint herein shall be deemed sufficient in all respects to cover the same."

This defendant begs leave to refer to said stipulation and to the exhibits thereto now being on file and of record in this court and in this cause for greater certainty in this behalf.

Further answering, this defendant says that it has entered into stipulations with the complainant herein for the dismissal of said several suits mentioned in said stipulation, the complaints in which are attached to said stipulation as Exhibits "F" to "L," inclusive.

This defendant, further answering, claims that by virtue of the compact existing between the United States and the State of Wisconsin made and entered into at the time and by virtue of the admission of said State into the Union upon an equal footing with the original States, said State obtained and by mediate and immediate conveyances from said State the defendant herein now holds the fee simple title to all of the property described in the bill of com-
143 plaint herein, excepting only the northeast quarter (NE. ¼) of the southwest quarter (SW. ¼) of section sixteen (16), township forty-six (46) north, range three (3) west, as to which this defendant claims no title; subject only to the Indian right of hunting thereon with the other usual privileges of occupancy until removed by the President of the United States.

Wherefore this defendant prays that by way of affirmative relief it be decreed on final hearing hereof.

(1) That title to the said property herein claimed to be so owned by it is in this defendant free from any claims by the Indian allottees mentioned in said bill of complaint, or any other persons or of any claim or right of allotment by the United States, but subject only to the Indian right of hunting with the other usual privileges of occupancy until removed by the President of the United States; and that

the money so deposited, as aforesaid, and mentioned in said Exhibit "22" of the stipulation herein be found and decreed to belong to this defendant absolutely and that said money be ordered to be paid over and delivered to this defendant;

(2) Or, in the alternative, in case it shall be found and decreed by this court that this defendant is not entitled, as aforesaid, to the whole of the property, subject as aforesaid, so claimed by it herein, but only to a part or parts thereof, then and in such event the court find and decree that it is entitled to and that there be paid over and delivered to this defendant such portion of said sum so deposited and mentioned, as aforesaid, in said Exhibit "22" attached to the stipulation herein, as has been so deposited on account of

144 timber removed from said part or parts of said property;

(3) And for such further and other relief in the premises as the court may deem proper and equity may require.

And this defendant will ever pray, etc.

J. S. STEARNS LUMBER COMPANY,
By W. W. GURLEY, ARTHUR DYRENFORTH, AND OLIN, BUTLER, STERBINS, CURKEET & STROUD,
Its Solicitors.

Endorsed: 28 B-C. Dk. U. S. Dist. Court, West. Dist. of Wis. United States vs. Stearns Lbr. Co. Amendment to answer. Filed Feb. 20, 1915. F. W. Oakley, Clerk.

145 Journal entry: 28 B, Civil Docket. Feb. 20, 1915. United States of America, complainant, vs. J. S. Stearns Lumber Company, defendant. Hearing before the court, argued, concluded, and taken under advisement.

146 Afterwards—to wit, Mar. 25, 1915—filed stipulation, as follows:

In the District Court of the United States, Western District of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANT, v. J. S. STEARNS LUMBER COMPANY, DEFENDANT.	In Equity.

Additional stipulations for agreed case.

It is hereby stipulated and agreed by and between the parties hereto, by their respective solicitors, that the facts hereinafter set forth are admitted to be true for the purpose of the hearing hereof, with the same force and effect in all respects as if proof thereof had been duly made, viz:

1. That the aggregate of the amounts, which, in accordance with stipulations by and on behalf of the parties in interest herein, have

been deposited in national banks for the benefit of the party who shall be finally entitled thereto, is, after deducting scale expenses paid by the Indian agent, $66,833.56, as shown by the tabulation of the several amounts constituting said aggregate which is hereto attached and marked Exhibit "23"; that the timber, on account of which said sum of $66,833.56 was so deposited, was cut under said stipulations, from the lands, particularly described in said Exhibit "23," title to which is claimed herein by the defendant; that the defendant makes no claim whatever to any of the amounts shown by
147 Exhibit "22," attached to the "Stipulations for Case Agreed," heretofore filed herein, other than those amounts set forth in said Exhibit "23"; and that interest has, from time to time since the deposits of said respective amounts so claimed by the defendant, been allowed and credited thereon by the respective banks in which said several amounts have been, from time to time, deposited.

2. That since the date of said Exhibit 22—to-wit, February 6, 1914—certain of the funds shown by said exhibit to have been deposited in certain banks have been transferred to other banks as follows, to-wit:

(*a*) The items of $2,036.14 and $9.29, aggregating $2,045.43, for timber cut from the northeast one-quarter (NE. ¼) of the northeast one quarter (NE. ¼) of section sixteen (16), township 46 north, range 3, west, shown by said Exhibit 22 to have been deposited in the First National Bank, Madison, Wisconsin, were transferred to and are now deposited in the First National Bank, Grand Rapids, Wisconsin, as shown by Exhibit 23 hereto attached; making (together with the sum of $805.64, shown in Exhibit 22 to be deposited in said First National Bank, of Grand Rapids, Wisconsin, for timber cut from said northeast one-quarter (NE. ¼) of the northeast one-quarter (NE. ¼) of said section) the total amount of money so deposited in said First National Bank, Grand Rapids, Wisconsin, for timber so cut from the northeast one-quarter (NE. ¼) of the northeast one-quarter (NE. ¼) of said section, $2,851.07, as shown by said Exhibit 23 hereto attached.

(*b*) The item of $6,177.73 for timber cut from the southeast one-quarter (SE. ¼) of the southeast one-quarter (SE. ¼) of section 16, township 46 north, range 3 west, shown by said Exhibit 22 to have been deposited in the National Bank of Waupon, Wisconsin,
148 was transferred to and is now deposited in the Commercial National Bank, Madison, Wisconsin, as shown by said Exhibit 23 hereto attached.

(*c*) The item of $7,022.36 for timber cut from the southeast one-quarter (SE. ¼) of the southeast one-quarter (SE. ¼) of section 16, township 47 north, range 2 west, shown by said Exhibit 22 to have been deposited in the National Bank of Waupon, Wisconsin, was transferred to and is now deposited in the Commercial National Bank of Madison, Wisconsin, as shown by said Exhibit 23, hereto attached.

3. That the pleadings herein shall be deemed sufficient in all respects to cover the facts and matters set forth in this stipulation.

THE UNITED STATES OF AMERICA, COMPLAINANT,
By C. C. DANIELS, A. C. HOPPMANN,
Attorneys of Department of Justice, Solicitors.
J. S. STEARNS LUMBER COMPANY, DEFENDANT,
By W. W. GURLEY, ARTHUR DYRENFORTH AND OLIN,
BUTLER, STEBBINS, CURKEET and STROUD,
Solicitors for Defendant.

149 Exhibit 23.

Name of bank.	Description of lands.	Amount deposited.	
City National Bank, Duluth, Minn	Southwest quarter of northwest quarter, section sixteen (16), township forty-six (46) north, range three (3) west.	$334.13	
First National Bank, Madison, Wis	Northwest quarter of southwest quarter, same section.	616.85	
" " " " "	Southeast quarter of northwest quarter, same section.	328.93	
Eau Claire National Bank, Eau Claire, Wis	Southeast quarter of northeast quarter, same section.	1,560.71	
National German-American Bank, Wausau, Wis	Northeast quarter of southeast quarter, same section.	6,572.33	
" " " " " "	Southeast quarter of northeast quarter, same section.	4,977.07	
First National Bank, Marshfield, Wis	Northeast quarter of northwest quarter, same section.	924.39	
Commercial National Bank, Madison, Wis	Southeast quarter of southeast quarter, same section.	6,177.73	
National Exchange Bank, Waukesha, Wis	Northwest quarter of northwest quarter, same section.	5,122.83	
" " " " "	Northeast quarter of northwest quarter, same section.	5,224.68	
" " " " "	Southwest quarter of northwest quarter, same section.	3,391.67	
" " " " "	Southeast quarter of northwest quarter, same section.	509.33	
" " " " "	Northwest quarter of southwest quarter, same section.	2,525.59	
" " " " "	Southwest quarter of southwest quarter, same section.	2,557.95	
" " " " "	Northwest quarter of northeast quarter, same section.	2,858.41	
First National Bank, Grand Rapids, Wis	Southeast quarter of southeast quarter, same section.	287.80	
" " " " " "	Northeast quarter of northeast quarter, same section.	2,851.07	
First National Bank, Wausau, Wis	Northeast quarter of southeast quarter, section sixteen (16), township forty-seven (47) north, range two (2) west.	137.59	$46,821.47
" " " " "	Northwest quarter of southeast quarter, same section	81.63	
First National Bank, Madison, Wis	Southeast quarter of northwest quarter, same section.	12.12	
First National Bank, Antigo, Wis	Southwest quarter of southeast quarter, same section.	1,917.21	
National German-American Bank, Wausau, Wis	Southeast quarter of southwest quarter, same section.	3,582.24	
" " " " " "	Southwest quarter of southwest quarter, same section.	4,250.15	
Commercial National Bank, Madison, Wis	Southeast quarter of southeast quarter, same section.	7,022.36	
" " " " "	Northeast quarter of northwest quarter, same section.	8.79	20,012.09
Total			66,833.56

150 Endorsed: 28 B. C. Dk. U. S. District Court, Western District of Wisconsin. United States vs. J. S. Stearns Lumber Company. Stipulation. Filed Mar. 25, 1915. F. W. Oakley, clerk.

151 Afterwards—to wit, Mar. 25, 1915—filed decision as follows:

District Court of the United States, Western District of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANT,
v.
J. S. STEARNS LUMBER COMPANY, DEFENDANT.

Findings of fact.

I.

The lands affected by this suit are all of section 16 (except the southwest quarter of the northeast quarter), township 47 north, range 2 west; all of section 16, township 46 north, range 2 west; and all of section 16 (except the west half of the southeast quarter and the east half of the southwest quarter), township 46 north, range 3 west, in the Bad River or La Pointe Indian Reservation, county of Ashland, State of Wisconsin.

II.

Prior to the adoption of the La Pointe treaty hereinafter mentioned the lands above described were unceded Indian lands occupied by Chippewa Indians of the Mississippi River and Lake Superior.

III.

On October 4, 1842, a treaty between said Indian tribes and the United States was entered into, known as the La Pointe treaty, duly proclaimed March 29, 1843, by the terms of which said Indian tribes ceded to the United States a large tract of land including those above described. By article 2 of said treaty the Indians
152 stipulated for the right of hunting on the ceded territory with the other usual privileges of occupancy until required to remove by the President of the United States, and that the laws of the United States should be continued in force in respect to their trade and intercourse with the whites until otherwise ordered by Congress. By article 4 of the treaty the United States agreed to pay the Indians the sum of approximately $850,000 in cash, goods, and other benefits, which was afterwards duly paid. No right of allotment in severalty to the Indians was reserved by said treaty, nor was the same in any way in trust for the benefit of said Indians. All that they reserved was the right of occupancy until required to remove by the President of the United States.

IV.

On August 6, 1846, the enabling act for the State of Wisconsin was passed by Congress. Subject to ratification by the people of the State, section 7 of said act provided "that section numbered 16 in every township of the public lands in said State, and where such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to said State for the use of schools."

The people of said State having adopted a constitution, ratified by a vote of the people March 2, 1848, said State was admitted into the Union by act of Congress approved May 29, 1848.

V.

That on the 30th day of September, 1854, the second La Pointe treaty was made between the Chippewa Indians of Lake Superior and the Mississippi and the United States, in and by which the reservation now known as the Bad River or La Pointe Indian Reservation, within the exterior boundaries of which the lands in
153 question are situated, was set off to the La Pointe Band of said Chippewa Indians. It was further provided by said treaty that each head of a family or single person over twenty-one years of age of the mixed bloods belonging to the Chippewas of Lake Superior should be entitled to 80 acres of land to be selected by them under the direction of the President and secured to them by patent in the usual form, and it was further provided that the Indians should not be required to remove from the homes set apart for them by said treaty, and all such of them as resided in the territory ceded should have the right to hunt and fish therein until otherwise ordered by the President.

VI.

That in the months of June and July, 1852, the exterior lines of township 47, ranges 2 and 3 west, were surveyed by the United States, and in May and June, 1873, the east, south, and west lines of township 46, ranges 2 and 3 west, were surveyed by the United States, and the north line resurveyed. In August and September, 1858, the section lines in township 47, range 2 west, were surveyed by the United States, and in May and June, 1873, the section lines of township 46, range 2 west, were surveyed by the United States, and in June and July, 1873, the section lines of township 46, range 3 west, were surveyed by the United States.

VII.

By patents from the State of Wisconsin and mesne conveyances thereunder all the lands described in the first finding of fact were conveyed or attempted to be conveyed to the defendant Stearns

Lumber Company prior to the year 1903, and said company paid therefor about the sum of $40,000, and was advised by its attorneys prior to said purchase that the title to said land was good, and that
the State of Wisconsin had good right and power to convey
154 the same under the act admitting said State into the Union.
The said State by virtue of its organization and admission into the Union upon an equal footing with the other States claimed the title to all school sections, including the sections 16 hereinbefore described, and the right to patent and sell the same to individuals.

VIII.

Pursuant to the second La Pointe treaty the Secretary of the Interior of the United States deposited in the General Land Office of the United States an order dated June 22, 1907, accompanied by a schedule of returns dated June 21, 1907, from the Office of Indian Affairs, containing a list of selections of lands for certain Indians on the Bad River or La Pointe Reservation, and on June 26, 1907, the President of the United States, in accordance with the provisions of article 3 of said treaty, approved certain selections of lands, and on December 16, 1907, the United States executed patents purporting to convey in severalty to different members of the La Pointe Band of said Chippewa Indians and their descendants all of the lands hereinbefore described. Said patents recited that they were made under the third article of said second La Pointe treaty of September 30, 1854, each containing the following provision: "But with the stipulation that said (patentee) and his heirs shall not sell, lease or in any manner alienate said tract without the consent of the United States," said stipulation also being repeated in the habendum clause of each of said patents.

IX.

The patentees under the State of Wisconsin and their mediate and immediate grantees down to the year 1904 paid taxes and assessments assessed by the State of Wisconsin on said lands, and cut timber thereon without interference by any one. In the year 1904 the Secretary of the Interior of the United States set up the claim on
155 behalf of the Indians of the La Pointe Band that they were the owners of said land, and forbade the cutting of timber thereon by the grantees of the State. Thereupon the suit of Wisconsin v. Hitchcock was brought in the Supreme Court of the United States, reported in 201 United States Supreme Court Reports, page 202. It was stipulated that either party to this action might introduce in evidence any part of the record in said suit of Wisconsin v. Hitchcock.

X.

Defendant instituted certain suits in the Circuit Court of the county of Ashland, Wisconsin, against certain of the allotees in said

United States patents, for the purpose of quieting the title to the lands therein described. Stipulations were entered into in said actions for the dismissal thereof, and reciting that the defendant in this suit having cut certain timber upon portions of said land covered by said stipulations, the value thereof in money had been deposited with the superintendent of Indian schools of the La Pointe Reservation for the benefit of the party who should finally be entitled thereto. It was thereupon stipulated in this suit that such stipulations in the State court should be treated and considered as stipulations in this cause with the same force and effect as if they had been entered into in this action, and that the allegations of the bill of complaint herein should be deemed sufficient in all respects to cover the same. This cause was submitted to the court upon an agreed case in writing, which agreed case contains all the evidence considered by the court on such hearing, and being marked No. 28–B. C. Dk., and filed July 28, 1914, F. W. Oakley, clerk.

Conclusions of law.

I

The facts in this case are in all respects substantially the same as in the case of Beecher v. Weatherby, 95 U. S., 517, and the con-
156 clusion of law hereon should be the same as in that case.

II.

The ultimate title in fee simple to the real estate described in the first finding of fact is vested in the defendant, subject, however, to the Indian right of hunting, with the other usual privileges of occupancy, until removed by the President of the United States. The standing timber on said real estate is to be deemed also real estate, title to which is vested in the defendant in the same manner as the title to the land itself, but defendant has no right to remove the same so long as the title by occupancy of the Indians remains. Said Indian right of occupancy includes the reasonable use of said standing timber, but does not include the right to use it commercially or the right of cutting or marketing the same.

III.

The standing timber on part of said land having been burned, and it having become necessary to cut and remove the same, title to the moneys received therefor having been deposited with the superintendent of Indian schools of the Bad River Reservation for the benefit of the person who shall finally be entitled thereto, and the parties having agreed upon and filed additional stipulations for the agreed case herein in which the amount of money so deposited is

fixed at the sum of $66,833.56, and the said superintendent having redeposited said moneys in certain national banks for the benefit of the person who shall finally be entitled thereto, and interest having from time to time been allowed and credited upon said deposits by the respective banks from whom the same is due, it should thereupon be decreed that the defendant is entitled to said sum of $66,833.56, with all interest accrued or to accrue thereon, and that the United States shall cause to be paid over and delivered to said
157 defendant such sum of money to be particularly stated by the decree, together with all interest accruing therefrom.

Madison, Wis., March 25, 1915.

A. L. SANBORN, *Judge.*

Endorsed: No. 28, B. C. Dk. United States District Court, Western District of Wisconsin. United States of America vs. J. S. Stearns Lumber Company. Decision. Filed Mar. 25, 1915. F. W. Oakley, clerk.

158 Afterwards—to-wit, Mar. 25, 1915—filed decree as follows:

In the District Court of the United States of America, Western District of Wisconsin.

THE UNITED STATES OF AMERICA, COMPLAINANT.
v.
J. S. STEARNS LUMBER COMPANY, DEFENDANT. } In Equity.

Decree.

This cause coming on to be heard upon the bill of complaint, answer and amendment to the answer, and upon the stipulations of facts in writing and the exhibits thereto filed herein on July 28, 1914, and the plats of surveys referred to therein and in evidence, and the additional stipulation for agreed case filed herein March 25, 1915, being all the evidence considered by the court, and the court having read said pleadings and considered said evidence and heard the arguments of counsel, and being fully advised in the premises, it is ordered, adjudged, and decreed:

1. That the defendant, J. S. Stearns Lumber Company, by virtue of the compact upon which the State of Wisconsin was admitted into the Union, and by virtue of the certain patents of said State and the certain conveyances and other matters appearing of
159 record or in evidence herein, is vested with title in fee simple to the following described lands situated in Asland County, Wisconsin, viz: All of section 16, township 46 north, range 2 west; all of section 16, township 46 north, range 3 west, except the east ½ of the southwest ¼ thereof and the west ½ of the southeast ¼ thereof; and all of section 16, township 47 north, range 2 west, except the

southwest ¼ of the northeast ¼ thereof; subject only to the right of Indians of the tribe known as the Chippewas of Lake Superior to hunt on the said lands, with the other usual privilege of occupancy, until required to remove by the President of the United States.

2. That the defendant, J. S. Stearns Lumber Company, likewise is vested with title in fee simple to the timber on said lands, subject only to the reasonable use thereof, in good faith, by said Indians, incident to their said right to hunt upon said lands with the other usual privilege of occupancy until required to remove by the President of the United States.

3. That said right to hunt and privilege of occupancy, during its continuance, as aforesaid, does not include the right or privilege in said Indians to cut asid timber for the purpose of selling or marketing the same or for other commercial use.

4. That the said defendant, J. S. Stearns Lumber Company, during the continuance, as aforesaid, of said right to hunt and other usual privilege of occupancy, has no right to remove said timber except with the consent of the United States acting on behalf of said Indians as its wards.

160 5. That certain timber on parts of the lands hereinabove in paragraph (1) described having been burned, and the defendant having, under agreement between it and the United States representing and acting on behalf of said Indians, as its wards, cut the same and deposited with the agent of the United States as guardian and representative of said Indians, viz: The Superintendent of Indian Schools of the La Pointe or Bad River Reservation, certain moneys, as the agreed price of the timber so cut, which moneys were by him deposited or caused to be deposited in the several banks hereinafter named; and interest having been, from time to time, credited on said deposited moneys by said banks; and it having also been agreed between the United States, acting as aforesaid, and the defendant that said moneys should be paid over to the persons who should be finally entitled thereto, it is hereby further ordered, adjudged, and decreed that the defendant is entitled to, and the complainant, the United States, pay over and deliver or cause to be paid over and delivered to the defendant, J. S. Stearns Lumber Company, the following sums of money so deposited, as aforesaid, as the agreed price of the timber so cut from the following-described lands, together with interest allowed and to be allowed by said banks (as shown and will be shown by the books of said banks) on said sums of money up to the date of said payment to the defendant:

161 Name of bank.	Description of lands.	Amount deposited.
City National Bank, Duluth, Minn.....	Southwest quarter of northwest quarter, section sixteen (16), township forty-six (46) north, range three (3) west.	$334.13
First National Bank, Madison, Wis.....	Northwest quarter of southwest quarter, same section.	616.85
" " " " "	Southeast quarter of northwest quarter, same section.	328.93
Eau Claire National Bank, Eau Claire, Wis.	Southeast quarter of northeast quarter, same section.	1,560.71
National German-Americana Bnk., Wausau, Wis.	Northeast quarter of southeast quarter, same section.	6,572.33
" " " "	Southeast quarter of northeast quarter, same section.	4,977.07
First National Bank, Marshfield, Wis...	Northeast quarter of northwest quarter, same section.	924.39
Commercial National Bank, Madison, Wis.	Southeast quarter of southeast quarter, same section.	6,177.73
National Exchange Bank, Waukesha, Wis.	Northwest quarter of northwest quarter, same section.	5,122.83
" " " "	Northeast quarter of northwest quarter, same section.	5,224.68
" " " "	Southwest quarter of northwest quarter, same section.	3,391.67
" " " "	Southeast quarter of northwest quarter, same section.	509.33
" " " "	Northwest quarter of southwest quarter, same section.	2,525.59
" " " "	Southwest quarter of southwest quarter, same section.	2,557.95
" " " "	Northwest quarter of northeast quarter, same section.	2,858.41
First National Bank, Grand Rapids, Wis.	Southeast quarter of southeast quarter, same section.	287.80
" " " " "	Northeast quarter of northeast quarter, same section.	2,851.07
		46,821.47
First National Bank, Wausau, Wis.....	Northeast quarter of southeast quarter, section sixteen (16), township forty-seven (47) north, range two (2) west.	137.59
" " " " "	Northwest quarter of southeast quarter, same section.	81.63
First National Bank, Madison, Wis.....	Southeast quarter of northwest quarter, same section.	12.12
First National Bank, Antigo, Wis.....	Southwest quarter of southeast quarter, same section.	4,917.21
162 National German Bank, Wausau, Wis.	Southeast quarter of southwest quarter, same section.	3,582.24
" " " " " ..	Southwest quarter of southwest quarter, same section.	4,250.15
Commercial National Bank, Madison, Wis.	Southeast quarter of southeast quarter, same section.	7,022.36
" " " "	Northeast quarter of northwest quarter, same section.	8.79
		20,012.09
Total.....	.....	66,833.56

6. That the following patents issued by the United States, each bearing date December 16, 1907, purporting to convey the following-described parcels of land respectively to the following persons, respectively, members of the Chippewa Tribe of Indians of Lake Superior and wards of the United States, residing upon the Bad River or La Pointe Reservation in Ashland County, Wisconsin, are and each of them is invalid and of no effect to the extent that they or any of them cover the lands, or any part or parts of the lands, described in paragraph one (1) of this decree, viz:

1. The patent to Ambrose Robideaux, covering the north $\frac{1}{2}$ of the southwest $\frac{1}{4}$ of section 16, township 46 north, range 3 west.

2. The patent to Joseph Connors, sr., covering the southeast ¼ of the northeast ¼ and the northeast ¼ of the southeast ¼ of section 16, township 46 north, range 3 west.

3. The patent to William Ashman, covering the north ½ of the southwest ¼ of section 16, township 46 north, range 2 west.

4. The patent to Charles Ashman, covering the north ½ of the northwest ¼ of section 16, township 46 north, range 2 west.

163 5. The patent to Frank Fisk, covering the north ½ of the northeast ¼ of section 16, township 46 north, range 2 west.

6. The patent to Nancy Headflyer, covering the west ½ of the northwest ¼ of section 16, township 47 north, range 2 west.

7. The patent to Mary Sero, covering the east ½ of the southwest ¼ of section 16, township 47 north, range 2 west.

7. That the United States had on said December 16, 1907, and now has no power to issue patents or make allotments to Indians in severalty as to the lands mentioned in paragraph one (1) of this decree, title to which is vested in fee simple in the defendant, subject, as aforesaid, only to the right of said Indians of the tribe known as the Chippewas of Lake Superior to hunt on said lands with the other usual privilege of occupancy until required to remove by the President of the United States; and that the United States had not on December 16, 1907, and has not now any such title or right in and to or in reference to said lands as is purported to be conveyed in and by said several patents; and that no right in said Indians, or any of them, or in any Indians, of selection or allotment of said lands in severalty now exists or existed on December 16, 1907, or at the time or times of making the selections of any of said lands as the basis of issuing said patents, or of making or depositing any schedule or return, or of the approval of any such selection, or of any order, or other act in relation thereto.

8. That the equities are with the defendant, and that the bill of complaint herein be and it is hereby dismissed for want of equity.

ARTHUR L. SANBORN, *Judge.*

164 Endorsed: 28 B–C Dk. U. S. District Court, Western District of Wisconsin. United States vs. J. S. Stearns Lumber Company. Decree. Filed Mar. 25, 1915. F. W. Oakley, clerk.

165 Afterwards—to wit, Jul. 29, 1915—filed petition on appeal, as follows:

In the District Court of the United States for the Western District of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANT, *v.* J. S. STEARNS LUMBER COMPANY, DEFENDANT.	In Equity, No. 28–B.

Petition on appeal.

The above-named complainant, conceiving itself aggrieved by the decree made and entered on the 25th day of March, 1915, in the

above-entitled cause, does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors, which is filed herewith, and prays that this appeal may be allowed and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the United States Supreme Court.

C. C. DANIELS,
Special Assistant to the Attorney General,
Attorney for the Complainant.

Endorsed: No. 28–B. In equity. In the District Court of the United States for the Western District of Wisconsin. United States of America, complainant, vs. J. S. Stearns Lumber Company, defendant. Petition on appeal. Filed July 29, 1915. F. W. Oakley, clerk. C. C. Daniels, special assistant to Attorney General, complainant's attorney.

166 Afterwards—to wit, July 29, 1915—filed order for appeal, as follows:

At a stated term of court—to wit, the special July term, 1915—of the District Court of the United States of America for he western district of Wisconsin, held at the courtroom in the city of Madison and county of Dane, on this the 29th day of July, in the year of our Lord one thousand nine hundred and fifteen.

Present: The Honorable A. L. Sanborn, judge for the Western District of Wisconsin, sitting in equity.

UNITED STATES OF AMERICA, COMPLAINANT,
v.
J. S. STEARNS LUMBER COMPANY, DEFENDANT.

On motion of C. C. Daniels, special assistant to the Attorney General, attorney for complainant, and on consideration of petition on appeal and assignments of error by complainant herein filed, it is ordered that an appeal to the United States Supreme Court from the decree heretofore filed and entered herein be, and the same is hereby, allowed, and that a certified transcript of the record, containing all the pleadings, all agreed statements of fact, all evidence and exhibits,
167 the decree, and the court's findings of fact and conclusions of law, and all proceedings herein be forthwith transmitted to the said United States Supreme Court.

A. L. SANBORN, *Judge.*

Dated this 29th day of July, 1915.

Endorsed: In equity. No. 28–B. In the District Court of the United States for the Western District of Wisconsin. United States of America, complainant, vs. J. S. Stearns Lumber Company, de-

fendant. Order for appeal. Filed Jul. 29, 1915. F. W. Oakley, clerk.

168 Afterwards—to-wit, July 29, 1915—filed assignment of errors, as follows:

In the District Court of the United States for the Western District of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANT, *v.* J. S. STEARNS LUMBER COMPANY, DEFENDANT.	In Equity. No. 28–B.

Assignment of errors.

Now comes the complainant in the above-entitled cause in connection with its petition for an appeal herein to the Supreme Court of the United States and files this, its assignment of errors:

I.

The court erred in holding that the defendant, as grantee of the State of Wisconsin, is vested with the title in fee simple of the lands involved herein, subject only to the right of the Indians to hunt thereon, with the other usual privileges of occupancy, until required by the President to remove.

II.

169 The court erred in holding that the defendant is likewise invested with title in fee simple to the timber on said lands, and while having no right to remove the same without the consent of the United States, acting in behalf of its Indian wards, nevertheless the defendant is entitled to receive the money paid for certain burnt timber, which money was deposited with the Indian agent to await the determination of the litigation.

III.

The court erred in holding that the patents issued by the United States to the Indian allottees named in the bill of complaint are null and void and of no effect.

IV.

The court erred in not holding that under the grant of school lands made by Congress to the State of Wisconsin the *the* title of the State did not vest in any particular section until the subdivisional

lines had been surveyed by the authority of the United States and such survey had been approved by the surveyor general and accepted by the Commissioner of the General Land Office.

V.

The court erred in not holding that the title to the lands involved herein had not vested in the State of Wisconsin, when, by the treaty of September 30, 1854, the said lands were specifically set aside as a reservation for the use of those Indians of the Chippewas of Lake Superior known as the La Pointe Band.

170 VI.

The court erred in dismissing the bill of complaint.

C. C. DANIELS,
Special Assistant to the Attorney General,
Attorney for the Complainant.

Endorsed: In equity. No. 28–B. In the District Court of the United States for the Western District of Wisconsin. United States of America, complainant, vs. J. S. Stearns Lumber Company, defendant. Assignment of errors. Filed Jul. 29, 1915. F. W. Oakley, clerk. C. C. Daniels, special assistant to the Attorney General, complainant's attorney.

171 Afterwards—to-wit, August 18, 1915—filed precipe for record, as follows:

District Court of the United States of America, Western District of Wisconsin.

THE UNITED STATES OF AMERICA, COMPLAINANT.
v.
J. S. STEARNS LUMBER COMPANY, DEFENDANT. } Case No. 28–B.

To F. W. Oakley, Esq., Clerk United States District Court for the Western District of Wisconsin.

SIR: In preparing the transcript of record on writ of error in the above-entitled case you will include in said record the following papers: Bill of complaint; subpœna and return of service thereon; appearance of William W. Gurley as attorney for defendant; answer; request for substitution of solicitors; order substituting attorneys; stipulation for case agreed, and exhibits; amendment
172 to answer; additional stipulation for case agreed; decree; decision; petition on appeal; assignment of errors; order for appeal; citation and admission of service thereon; precipe for transcript.

AUGUST C. HOPPMANN,
Assistant United States Attorney, Western District
of Wisconsin, Attorney for Complainant.

Service of the above precipe for transcript of record is hereby acknowledged by receipt of a copy thereof this 16th day of August, A. D. 1915.

W. W. GURLEY and ARTHUR DYRENFORTH,
Attorneys for Defendant.

I hereby expressly waive the provisions of the act of February 13, 1911.

AUGUST C. HOPPMANN,
Assistant United States Attorney,
Attorney for Plaintiff in Error.

Endorsed: Original No. 28-B. In equity. In the District Court of the United States for the Western District of Wisconsin. United States of America, complainant, vs. J. S. Stearns Lumber Company, defendant. Precipe for record. Filed Aug. 18, 1915. F. W. Oakley, clerk.

173 UNITED STATES OF AMERICA,
Western District of Wisconsin, ss:

I, F. W. Oakley, clerk of the District Court of the United States for said district, do hereby certify that I have compared the foregoing transcript of record with the original records of this court now remaining of record in my office in the case therein lately pending of The United States of America, complainant, versus J. S. Stearns Lumber Company, defendant, and that the same is a correct transcript therefrom.

I further certify that the citation therein, with admission of service thereon hereto annexed, is the original citation and admission of service granted in said cause.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court, at the city of Madison, in the said Western District of Wisconsin, this 17th day of January, in the year of our Lord one thousand nine hundred and sixteen, and of the Independence of the said United States the one hundred and fortieth.

[SEAL.] F. W. OAKLEY, *Clerk,*
By FRED W. FRENCH, *Deputy.*

174 UNITED STATES OF AMERICA, *ss.*

The President of the United States, to J. S. Stearns Lumber Company, Greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court, to be holden at Washington, in the District of Columbia, within thirty days from the date hereof, pursuant to an order allowing an appeal filed in the clerk's office of the District Court of the United States for the Western District of Wisconsin, wherein the United States of America is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said decree mentioned,

should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arthur L. Sanborn, judge, District Court of the United States for the Western District of Wisconsin, this 29th day of July, in the year of our Lord one thousand nine hundred and fifteen.

[SEAL.] A. L. SANBORN, *Judge.*

We hereby acknowledge receipt of the above citation by receipt of a copy thereof this 16th day of August, A. D. 1915.

W. W. GURLEY and ARTHUR DYRENFORTH,
Attorneys for Defendant.

175 (Indorsed:) No. 28–B. In equity. In the District Court of the United States for the Western District of Wisconsin. United States of America, complainant, vs. J. S. Stearns Lumber Company, defendant. Citation. Filed Aug. 18, 1915. F. W. Oakley, clerk.

176 Afterwards—to wit, August 28, 1915—order extending time in which to perfect appeal filed and entered, as follows:

THE UNITED STATES OF AMERICA, complainant,
v.
J. S. STEARNS LUMBER COMPANY (a corporation), defendant.
No. 28–B, Civil Docket.

Ordered by the court that an extension of sixty days time be granted to the complainant in which to perfect its appeal to the Supreme Court of the United States.

Dated August 28, 1915.

A. L. SANBORN, *Judge.*

177 Afterwards—to wit, October 28, 1915—order extending time in which to perfect appeal filed and entered, as follows:

District Court of the United States, Western District of Wisconsin.

THE UNITED STATES OF AMERICA, complainant,
v.
J. S. STEARNS LUMBER COMPANY (a corporation), defendant.
No. 23–B, Civil Docket.

Ordered by the court that an extension of sixty days time be granted to the complainant in which to perfect its appeal to the Supreme Court of the United States.

Dated October 28, 1915.

A. L. SANBORN, *Judge.*

178 Afterwards—to wit, December 28, 1915—order extending time in which to perfect appeal filed and entered as follows:

District Court of the United States, Western District of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANT, *v.* J. S. STEARNS LUMBER COMPANY (A CORPORATION), DEFENDANT.	No. 28–E, Civil Docket.

Ordered by the court that an extension of ninety days time be granted to the complainant in which to perfect its appeal to the Supreme Court of the United States.

Dated December 28, 1915.

A. L. SANBORN, *Judge.*

179 Afterwards—to-wit, September 11, 1915—filed order to transmit original exhibits to United States Supreme Court, as follows:

In the District Court of the United States for the Western District of Wisconsin.

UNITED STATES OF AMERICA, COMPLAINANT, *v.* J. S. STEARNS LUMBER COMPANY, DEFENDANT.	In Equity, No. 28–B.

Stipulations.

Whereas on the 29th day of July, 1915, an appeal to the United States Supreme Court, from a decree heretofore filed and entered herein, was duly allowed by the court, and a certified transcript of the record containing all the pleadings, all agreed statements of fact, all evidence and exhibits, the decree and the court's findings of fact and conclusions of law, and all proceedings herein ordered to be forthwith transmitted to the said United States Supreme Court;

It is hereby stipulated by counsel for complainant and counsel for defendant that the original exhibits filed herein may be withdrawn from the files of the District Court and transmitted to the said United States Supreme Court as a part of the record herein.

Dated this 3d day of September, 1915.

C. C. DANIELS,
Counsel for Complainant.
W. W. GURLEY and ARTHUR DYRENFORTH,
Counsel for Defendant.

180 *Order.*

The foregoing stipulation by counsel for complainant and defendant is hereby approved, and the clerk is ordered to transmit the original exhibits filed herein as a part of his record to the said United States Supreme Court.

Dated at Madison, Wisconsin, this 11th day of September, 1915.

A. L. SANBORN, *Judge.*

Endorsed: No. 28–B. In the District Court of the United States for the Western District of Wisconsin. United States of America, complainant, vs. J. S. Stearns Lumber Company, defendant. Order to transmit original exhibits to United States Supreme Court. Filed Sep. 11, 1915. F. W. Oakley, clerk.

(Indorsement on cover:) File No. 25112. W. Wisconsin D. C. U. S. Term No. 366. The United States, appellant, vs. J. S. Stearns Lumber Company. Filed January 28th, 1916. Filed No. 25112.

○

No. 94

In the Supreme Court of the United States

OCTOBER TERM, 1917.

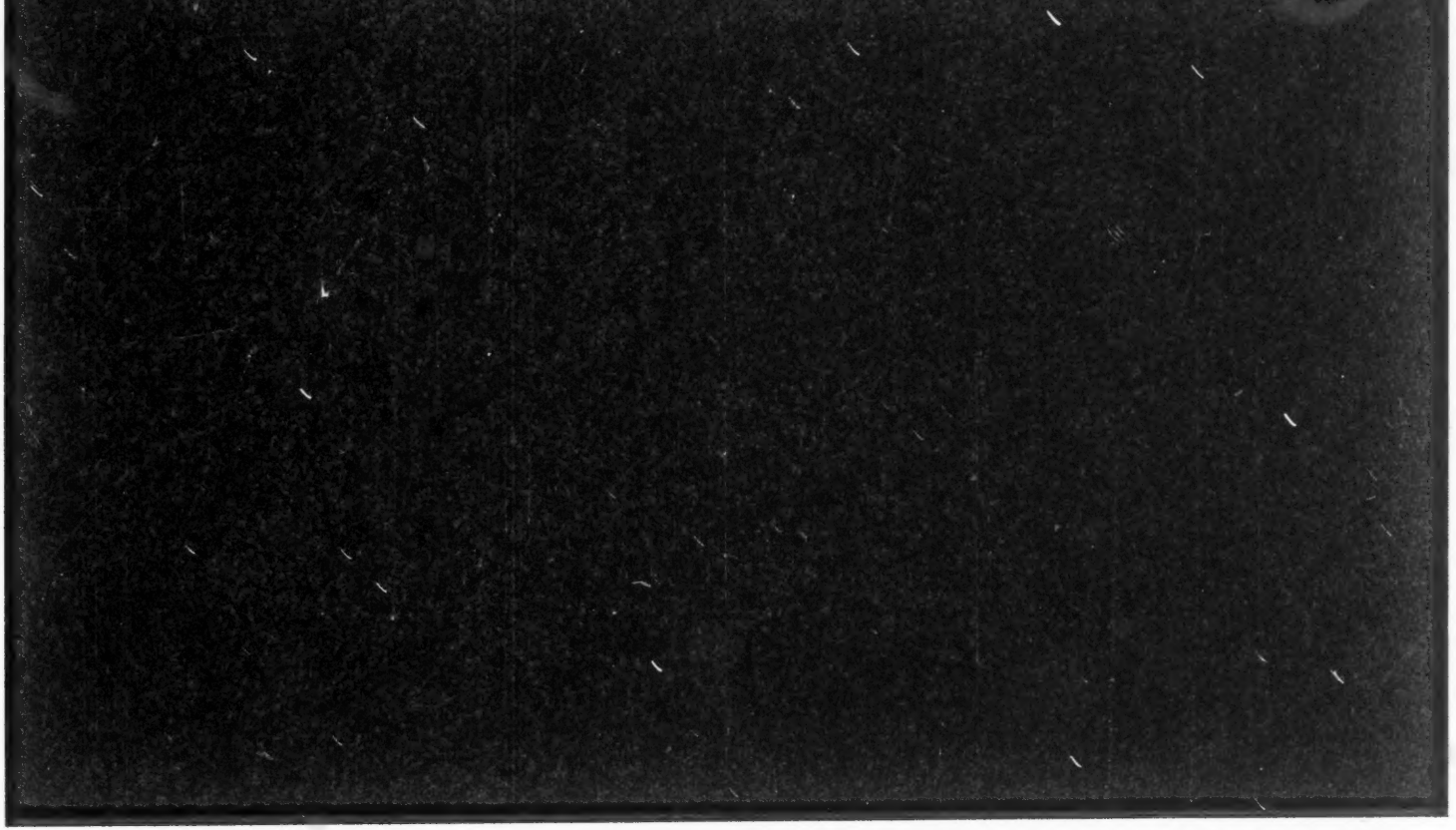
THE UNITED STATES, APPELLANT,

v.

[redacted] LUMBER COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON.

BRIEF FOR THE UNITED STATES.



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In the Supreme Court of the United States.

OCTOBER TERM, 1917.

THE UNITED STATES, Appellant,
v.
J. S. STEARNS LUMBER COMPANY. } No. 94.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The appeal of the United States in this case is taken directly to this court (R. 81) from a decree of the District Court of the United States for the Western District of Wisconsin (R. 77), vesting in the J. S. Stearns Lumber Company the title to 1,720 acres of alleged state school lands on the Bad River or La Pointe Indian reservation in the State of Wisconsin subject only to the Indian right of hunting and occupancy, and also awarding to the Lumber Company certain moneys arising from the sale of timber cut from the lands.

This case was heard on the bill (R. 1) and answer (R. 9, 68) and agreed facts (R. 15, 70), from which the following appears:

By a treaty dated October 4, 1842, proclaimed March 23, 1843 (7 Stat. 591), the Chippewa Indians of the Mississippi and Lake Superior ceded to the United States a large tract of country, embracing the lands in question, subject to the following stipulation (Article II):

> The Indians stipulate for the right of hunting on the ceded territory, with the other usual privileges of occupancy, until required to remove by the President of the United States, and that the laws of the United States shall be continued in force, in respect to their trade and intercourse with the whites, until otherwise ordered by Congress.

The Wisconsin enabling act of August 6, 1846, section 7 (9 Stat. 56, 58), contained the following grant:

> That section numbered sixteen, in every township of the public lands in said State, and, where such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to said State for the use of schools.

This grant became effective on May 29, 1848, by act of Congress approved on that date admitting Wisconsin to the Union (9 Stat. 233).

The President did not remove the Indians from all the land ceded by the treaty of 1842, and by another treaty with them dated September 30, 1854,

proclaimed January 29, 1855 (10 Stat. 1109), a portion thereof was set apart as a permanent reservation for one of the bands known as the La Pointe band, without saying anything about the sixteenth section of any township (Art. 2, par. 2d), and this reservation, known as the Bad River or La Pointe Reservation, embraces the lands in controversy (R. 17). Provision was made in the treaty for allotment in severalty of these lands to the Indians thereon by the President, in his discretion, and he was authorized to issue patents for such allotments "with such restrictions * * * as he may see fit to impose" (Art. 3).

The lands in controversy are in three sections numbered sixteen which became identified by surveys of one of the townships in 1864 and the other two in 1873 (R. 17–18).

In 1881, 1882, 1885 and 1887 the State of Wisconsin, claiming to own these lands under its school grant, patented them to various persons, and the Lumber Company claims title by mesne conveyances from these patentees. The purchases by the Lumber Company were in 1900 and 1901, and since the dates of its purchases it has paid all taxes and assessments levied against the property (R. 19–25).

On June 26, 1907, pursuant to the treaty of 1854, the President approved allotment selections covering the tracts in controversy in favor of certain Chippewa Indians, residing on the reservation in charge of an Indian Superintendent, and on Decem-

ber 16, 1907, patents therefor were issued and delivered to the allottees, and the allottees have ever since resided on the reservation and claimed the lands so allotted and patented to them (R. 26–27). The patent in each case contained a provision that the patentee and his heirs "shall not sell, lease or in any manner alienate, said tract without the consent of the President of the United States" (R. 30).

It was stipulated that, prior to the year 1904, the Lumber Company and its predecessors in interest under the State patents from time to time paid taxes and cut timber from said land without interference or hindrance by or on the part of the United States [1] (R. 27), and prior to these allotments none had been made to any Indian for any part of any section sixteen (R. 28).

On September 18, 1904, the State of Wisconsin brought its bill in equity in this court to enjoin the Secretary of the Interior from "interfering, in any wise, with its use, possession or enjoyment" of the sections numbered sixteen on the La Pointe or Bad River and the Flambeau Indian Reservations, including the lands here in controversy, claiming ownership under its school grant of 1848, and complaining that since the year 1899 the Secretary had been asserting a paramount interest or title to these lands in behalf of the Indians, and had "forbidden purchasers of such lands holding patents from the

[1] The stipulation on this point was improvident, as shown by *Wisconsin* v. *Hitchcock*, 201 U. S. 202, 207, 212, but the matter is not of controlling importance.

State to enter or make improvements or cut any timber thereon," thereby casting a cloud upon the alleged title of the State and its grantees (201 U. S. 202, 206, 207). In that suit such proceedings were had that on April 2, 1906, this court rendered its decision in which "the relative rights of the State and the Indians" were considered (201 U. S. 213), the right of the Indians was held to be paramount (p. 214) and the bill of the State was dismissed (p. 215).

In order to conserve certain timber on the lands in controversy which had been damaged by fire it was cut and removed by the Lumber Company with the consent of the Government authorities (R. 37–41), and its value in the sum of $66,833.56 was deposited to be delivered to the party adjudged in this suit to be entitled thereto (R. 71).

This suit is by bill in equity in the name of the United States on behalf of the Indian allottees, to establish the title of the Indians under their allotment patents, to annul the instruments under which the Lumber Company claims title, to enjoin the Company from further assertion of any right, title or interest in and to the premises, and for general relief (R. 1–7). The bill does not specifically pray for a recovery of the money impounded, but it is stipulated that the pleadings shall be deemed sufficient in all respects to cover this item (R. 70, 72).

In its decree the District Court ruled (1) that the Lumber Company is vested with title in fee simple

to the lands in controversy, subject only to the right of the Indians to hunt thereon, with the other usual privilege of occupancy, until required to remove by the President of the United States; (2) that the Company is likewise vested with title to the timber on said lands, subject only to the reasonable use thereof in good faith by the Indians incidental to their right of hunting and occupancy; (3) that such Indian right of hunting and occupancy does not include the right to remove timber for sale or commercial use; (4) that during the continuance of such Indian right of hunting and occupancy the Lumber Company has no right to remove timber from the lands without the consent of the United States as guardian of the Indians; (5) that as removal of the timber represented by the money impounded was necessary to conserve it on account of fire, the proceeds thereof belong to the company; and (6) that the allotment patents to the Indians are invalid and without effect for want of power or authority to make the allotments or issue the patents. It was accordingly decreed that the money impounded be paid over to the Lumber Company and that the bill of the United States be dismissed for want of equity (R. 77–80).

The direct appeal to this court is authorized by section 238 of the Judicial Code, the case being one in which the validity or construction of the Indian treaties of 1842 and 1854 is drawn in question. *Johnson* v. *Gearlds*, 234 U. S. 422, 433–434; *Worcester* v. *Georgia*, 6 Pet. 515, 541.

THE QUESTION PRESENTED.

The assignment of errors (R. 82) formally challenging the decree and separate rulings stated therein (R. 77), presents but a single question: Whether the State became vested with title to the lands in controversy by virtue of its school grant. We maintain that it did not, for the reason that the grant was subject to two distinct conditions, each of which, operating independently, has rendered the grant ineffectual as to these particular lands. Those conditions were: (1) The Federal power of disposition in dealing with the prior right of Indian occupancy; and (2) the Federal power of disposition at any time before identification of the lands by survey.

ARGUMENT.

I.

The School Grant to the State of Wisconsin was Subject to the Federal Power of Disposition in dealing with the Prior Right of Indian Occupancy.

This proposition has been definitely settled by several decisions of this court, and a reference to them is all that is necessary.

In *United States* v. *Thomas*, 151 U. S. 577, the question was whether a murder of which Thomas stood convicted by a Federal court had been committed on an Indian reservation, and this depended upon whether title to a certain section numbered sixteen in the La Court Orielles Reservation in Wisconsin on which the crime was committed had passed to the

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State under its school grant of 1848. The La Court Orielles Reservation was a part of that territory ceded to the United States by the Chippewa treaty of 1842, reserving the right of Indian occupancy until removal by the President, and, like the La Pointe Reservation involved in this case, it was set apart as a permanent reservation for one of the Chippewa bands by the treaty of 1854. In the *Thomas* case, as in this case, the State had sold the land under its claim of title. The land in that case, as in this, was subject to allotment under the treaty of 1854, but it had not as in this case actually been allotted. In the opinion, delivered by Mr. Justice Field, the effect of the prior right of Indian occupancy upon the school land grant was thus stated (p. 582):

> As it will be seen, by the treaty of 1842 ratified in 1843, which was previous to the enabling act, the Indians stipulated for the right of occupancy to the lands. That right of occupancy gave them the enjoyment of the land until they were required to surrender it by the President of the United States, which requirement was never made. Whatever right the State of Wisconsin acquired by the enabling act to the sixteenth section was subordinate to this right of occupancy for which the Indians stipulated and which the United States recognized. The general rule established by the Land Department in reference to the school lands in the different States is that the title to them vests in the several States in which the land is situated, subject to any prior right of occupation by the Indians

or others which the government had stipulated to recognize.

The effect of the treaty of 1854 was then considered and stated as follows (p. 584):

> That treaty provided for permanent reservations, which included the section in question. The treaty did not operate to defeat the prior right of occupancy to that particular section, but, by including it in the new reservations, made as a condition of the cession of large tracts of land in Wisconsin, continued it in force. The State of Wisconsin, therefore, had no such control over that section or right to it as would prevent its being set apart by the United States, with the consent of the Indians, as a part of their permanent reservation. So, by authority of their original right of occupancy, as well as by the fact that the section is included within the tract set aside as a portion of the permanent reservation in consideration of the cession of lands, the title never vested in the State, except as subordinate to that right of occupation of the Indians.

Wisconsin v. *Hitchcock*, 201 U. S. 202, was a suit in this court by the State of Wisconsin to enjoin the Secretary of the Interior from interfering with its use and enjoyment and the use and enjoyment by its grantees of the very sections involved in the case at bar, among others on the Flambeau Reservation. The contention of the State is set forth in the opinion, delivered by Mr. Justice Harlan, as follows (p. 211):

> The State contends that the effect of the treaty of 1843 was that the Chippewa Indians

> released to the United States all of their claim of title or interest in or to the lands therein described and each and every part thereof, and ceded the same to the United States, which thereupon became the absolute owner thereof free from any claim of said Indians; and that the State, upon its acceptance of the conditions prescribed by the enabling act of 1846, and its admission into the Union, became vested with an absolute right in and to all the sections 16 within said territory previously surveyed, as well as to the lands subsequently surveyed by the United States, with the right in the State to have the temporary possession or occupancy of the Indians terminated by the United States.

This contention was rejected with the observation that the case was controlled by the *Thomas* case (p. 212). The facts of that case were reviewed in order to show that "the question was distinctly presented as to the relative rights of the State and the Indians in said section 16 within the Indian reservation" (p. 213). After quoting at length from the *Thomas* case the following was said as to the applicability of the principle of that case (p. 214):

> It is true that the *Thomas* case did not have reference to the particular Indian reservations involved in the present suit—the Bad River or La Pointe and Flambeau Reservations—but only to the La Court Orielles Indian Reservation. But all three reservations had their origin alike in the same treaties—that of 1842, proclaimed in 1843, and that of 1854;

> and the effect of those treaties was considered in that case in connection with the enabling act of 1846 under which the State now claims, as it claimed in that case, absolute title to and full control over all the sections 16 named in that act. What the court said in the *Thomas* case as to the rights of Indians in virtue of their occupancy of the lands set apart for their use in the La Court Orielles Reservation, is strictly applicable to the rights of the Indians who have occupied, and so far as appears, still occupy, the Bad River or La Pointe and Flambeau Reservations. We could not sustain the claim of the State in the present suit without overruling the principles announced in the *Thomas* case; and that we are not disposed to do.

The power of the United States, notwithstanding the school grant, to deal with the reserved right of Indian occupancy in such a way as to establish these sixteenth sections as a part of a permanent Indian reservation, is placed beyond controversy by the decisions in *United States* v. *Thomas* and *Wisconsin* v. *Hitchcock*. The power to establish a permanent reservation for an Indian tribe involves as a matter of course the power to allot the lands within the reservation to the individual members of the tribe. Allotment in severalty has generally been the ultimate object of such reservations. It is the principal means employed to carry out the policy of fitting the Indians for citizenship. And it was an important feature of the treaty of 1854 under which the

reservation now in question was established. To say that the United States had not the power to allot these lands according to the terms of the treaty because of the State school grant is to say that the United States had not the power to make the treaty or establish the reservation because of that grant.

This point is covered by the decision in *Minnesota* v. *Hitchcock*, 185 U. S. 373. That was a suit in equity in this court by the State of Minnesota to enjoin the Secretary of the Interior from selling any sections 16 or 36 on the Red Lake Indian Reservation under the act of January 14, 1889 (25 Stat. 642). The State claimed these sections under a school grant in its enabling act of February 26, 1857 (11 Stat. 166, sec. 5), similar to the Wisconsin grant. On admission of the State, May 11, 1858 (11 Stat. 285), a large part of its territory was held by the United States subject to the right of occupancy of the Chippewa Indians. The act of 1889 provided for a commission to negotiate for a cession of the rights of the Indians to all this territory except such portions of the White Earth and Red Lake Reservations as were needed for allotments, to make allotments to the Indians on those reservations, and to sell the ceded lands for the benefit of the Indians. This was accomplished, and the State thereupon claimed title to the 16th and 36th sections of each township of the ceded lands. The court by Mr. Justice Brewer said (p. 393):

It is, of course, to be presumed that Congress will act in good faith; that it will not attempt to impair the scope of the school grant; that it intends that the State shall receive the particular sections or their equivalent in aid of its public school system. But considerations may arise which will justify an appropriation of a body of lands within the State to other purposes, and if those lands have never become public lands the power of Congress to deal with them is not restricted by the school grant, and the State must seek relief in the clause which gives it equivalent sections. If, for instance, Congress in its judgment believes that within the limits of an Indian reservation or unceded Indian country—that is, within a tract which is not strictly public lands—certain lands should be set apart for a public park, or as a reservation for military purposes, or for any other public uses, it has the power notwithstanding the provisions of the school grant section. So it is that when Congress came in 1889 to make provision for this body of lands it could have by treaty taken simply a cession of the Indian rights of occupancy, and thereupon the lands would have become public lands and within the scope of the school grant. But it also had the power to make arrangements with the Indians by which the entire tract would be otherwise appropriated.

II.

The school Land Grant to the State of Wisconsin was subject to the Federal Power of Disposition at any Time before Identification of the Lands by Survey.

This proposition also has been definitely settled by the decisions of this court.

The grant was not one *in praesenti* under which the State acquired a vested right in each sixteenth section, subject only to identification, which would relate back to the date of the grant. The language is that each section 16 "shall be granted" unless "sold or otherwise disposed of," in which case equivalent lands "shall be granted." The words "shall be granted" are used both with respect to the described sections and to the indemnity lands. Congress did not undertake to warrant that the State should take title at all events to the designated sections in every township, but only "that on the survey, defining the sections, the title to the lands should pass to the State provided sale or other disposition had not previously been made, and, if it had been made, that the State should be entitled to select equivalent lands." *United States* v. *Morrison*, 240 U. S. 192, 201.

Heydenfeldt v. *Daney Gold, etc., Co.*, 93 U. S. 634, involved the title to a sixteenth section in Nevada which had been patented by the State under its school grant, and which also had been patented by the United States after survey to a mineral claimant whose rights were initiated

after the date of the school grant but before the survey. The mineral patent from the United States was sustained under the power reserved to dispose of the land between the date of the school grant and the date of the survey. The court, by Mr. Justice Davis, said (p. 640):

> Until the *status* of the lands was fixed by a survey, and they were capable of identification, Congress reserved absolute power over them; and if in exercising it the whole or any part of a sixteenth or thirty-sixth section had been disposed of, the State was to be compensated by other lands equal in quantity, and as near as may be in quality.

This decision established a definite rule of construction which has been uniformly followed by the Land Department and by this court. *United States* v. *Morrison*, 240 U. S. 192, 205, 207, and cases cited.

In the present case the three townships containing the sections 16 in controversy were surveyed, one in 1864 and the other two in 1873 (Stipulation, par. xi, R. 17–18). By the Chippewa Indian treaty of September 30, 1854, proclaimed January 28, 1855 (10 Stat. 1109, art. 2, par. 2d), these townships were included in a permanent reservation established for the La Pointe band of Chippewa Indians (Stipulation, par. viii, R. 17). At this time there had been no survey of any of the lands. Article 3 of the treaty provided for survey when necessary, for allotment of the lands to members of the tribe from time to time, and for patents to the allottees for such allot-

ments in the discretion of the President (10 Stat. 1110). In accordance with these provisions allotments were made of the three sections 16 in controversy and patents therefor containing restrictions against alienation were issued in June 1907 (Stipulation, par. xxii, xxiii, xxiv, R. 26, 27, 30).

That the creation of this reservation before the lands were surveyed without excepting any school lands was a lawful disposition of such lands before the right of the State could attach is settled by explicit decisions of this court.

In *Minnesota* v. *Hitchcock*, 185 U. S. 373, the precise point arose with reference to a similar school grant to Minnesota and a similar reservation for the Chippewa Indians in that State "before any survey of the lands, before the State right had attached to any particular sections" (p. 398) and the rule of the *Heydenfeldt* case was applied (pp. 399–400).

In *United States* v. *Thomas*, 151 U. S. 577, the court was called upon to determine the right of Wisconsin under its school grant to one of the sixteenth sections embraced in one of the reservations established by the Chippewa treaty of 1854, in all respects like the reservation involved in this case, and the right of the State was denied. Mr. Justice Field, speaking for the court, referred to the treaty of 1854 and said (p. 582):

> By that treaty the Chippewas ceded a large portion of their territory, previously retained in Wisconsin and elsewhere, and provision was made in consideration thereof for the forma-

> tion of permanent reservations for their benefit, each to embrace three full townships, and their boundaries to be established under the direction of the President. One of these included the tract comprised in the La Court Oreilles reservation. In the provision for these reservations nothing was said of the sixteenth section of any townships, and it is clear that it was not contemplated that any section should be left out of any one of them. The land reserved was to be, as near as possible, in a compact form, except so far as the meandered lakes were concerned. When the townships composing these reservations were surveyed, the sixteenth section was already disposed of in the sense of the enabling act of 1846. It had been included within the limits of the reservations.

In *Wisconsin* v. *Hitchcock*, 201 U. S. 202, the court was again called upon to consider the same right of the State to the very sections involved in the present case, and the right was again denied upon the authority of the *Thomas* case. The above excerpt was quoted with approval (p. 213), and it was further stated that "the principles of the *Thomas* case were recognized and enforced in *Minnesota* v. *Hitchcock*" (p. 215).

The decisions in these cases were reexamined and approved in *United States* v. *Morrison*, 240 U. S. 192, 207, 209, in which was sustained a Federal disposition of designated school sections in Oregon by including them within a forest reservation after the

date of the Oregon school grant and before final identification by a completed survey.

Beecher *v.* Wetherby Distinguished.

In announcing its conclusions of law the District Court said (R. 76):

> The facts in this case are in all respects substantially the same as in the case of *Beecher* v. *Wetherby*, 95 U. S. 517, and the conclusion of law hereon should be the same as in that case.

That case was an action of replevin to recover logs cut from a section 16 in Wisconsin, brought by one claiming under a public land patent from the United States against one claiming under school land patents from the State, and the defendant prevailed on the ground that title to the section had passed to the State under its school grant. At the time of the school grant the section was embraced within an unsurveyed tract temporarily occupied by Indians. Afterwards the occupancy right of the Indians was extinguished by their removal to other lands and the section in question became unoccupied public land. The United States patent was issued pursuant to an act of Congress providing for sale of the abandoned reservation as public lands passed long after their survey. It was held that the right of the State attached to the section in question under its school grant subject to the Indian occupancy, and that this right became a perfect title when the Indian occupation was terminated without other disposition before

survey. It is therefore quite clear that the controlling features of the present case were wanting in that case. There was no permanent disposition made of the land by the United States as Indian land under the power to deal with the Indian right of occupancy; on the contrary that right was extinguished and the land thereupon became unoccupied public land. There was no disposition of the land by the United States before survey; on the contrary the attempted disposition occurred long afterwards.

In *Minnesota* v. *Hitchcock*, 185 U. S. 373, 395, referring to *Beecher* v. *Wetherby*, the court by Mr. Justice Brewer said (p. 398):

> The ruling was that the United States held the fee, subject only to the Indian right of occupancy; that by the school land section in the enabling act there was a grant, or promise to grant,—in either event to be taken as an appropriation of the fee to the State, subject to the Indian right of occupancy; that the Indians had removed from the lands and had received other lands for their occupation; that hence all Indian rights had ceased. The court, quoting in its opinion from *United States* v. *Cook*, 19 Wall. 591, said (p. 593): "The right of the Indians to their occupancy is as sacred as that of the United States to the fee, but it is only a right of occupancy. The possession, when abandoned by the Indians attaches itself to the fee without further grant."
>
> Hence, applying the doctrine in respect to earlier special and later general statutes, the

> Government having received from the Indians their right of occupancy, without any stipulation or agreement or trust in respect thereto, it was held that the act providing for the sale of the two townships could not have been intended to authorize a sale of specific sections therein which had been already conveyed or promised to the State. But this case stands on entirely different grounds. Before any survey of the lands, before the State right had attached to any particular sections, the United States made a treaty or agreement with the Indians, by which they accepted a cession of the entire tract under a trust for its disposition in a particular way.

And again (p. 401):

> Of course, when the Indian tribe has been removed by treaty from one body of land to another the interest of the tribe in the land from which it has been removed ceases and the full obligation of the Government to the Indians is satisfied when the pecuniary or real estate consideration for the cession is secured to them. But in some instances, and this is one of them, the Indians have not been removed from one reservation to another, but the Government has proceeded upon the theory that the time has come when efforts shall be made to civilize and fit them for citizenship.

In *United States* v. *Morrrison*, 240 U. S. 192, referring to *Beecher* v. *Wetherby*, the court, by Mr. Justice Hughes, said (pp. 206–207):

> That is, the lands had been surveyed in 1854; prior to that time, there had been no other dis-

position of the fee by the United States; the title had vested in the State subject at most to the Indian occupancy, and this had terminated. There was abundant reason for the decision that these lands were not embraced, and were not intended to be embraced, in the provisions for sale made by the Act of 1871. What was said in the opinion must be considered in the light of the facts (*Weyerhaeuser* v. *Hoyt*, 219 U. S. 380, 394). The *Heydenfeldt* case was not cited and can not be regarded as overruled. See *New York Indians* v. *United States*, 170 U. S. 1, 18; *Minnesota* v. *Hitchcock*, 185 U. S. 375, 399–401.

CONCLUSION.

The result is that the title to the lands in controversy never passed to the State but was reserved by the United States and passed to the Indian allottees with restrictions on alienation. The timber of course goes with the land, and the money arising therefrom belongs to the Indians who are under Federal guardianship. Hence the United States is entitled to a decree quieting the Indians' title and awarding to it the timber money for their benefit.

It is therefore respectfully submitted that the decree of the District Court should be reversed and that the cause should be remanded with directions to enter a decree for the United States as above stated.

FRANCIS J. KEARFUL,
Assistant Attorney General.

DECEMBER, 1917.

○

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1917.

No. 94

THE UNITED STATES,
Appellant,

vs.

J. S. STEARNS LUMBER COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

BRIEF AND ARGUMENT FOR J. S. STEARNS LUMBER COMPANY.

ARTHUR DYRENFORTH,
Solicitor for J. S. Stearns Lumber Company.

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BUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1917.

No. 94.

THE UNITED STATES,
Appellant.

vs.

J. S. STEARNS LUMBER COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

BRIEF FOR J. S. STEARNS LUMBER COMPANY.

CHRONOLOGY OF PRINCIPAL FACTS.

1842—Treaty (7 Stat., 591) whereby the Lake Superior and Mississippi Chippewas ceded all their Wisconsin and Michigan lands to the United States reserving "the right of hunting on the ceded territory with the other usual privileges of occupancy until removed by the President." In the Wisconsin territory so ceded, were included the three sections 16 in question lying in Township 46, Range 2 and Range 3 West, and Township 47, Range 2 West.

1848—Wisconsin admitted into the Union as a state with the following provisions as to school lands:

That "sections numbered 16 in every township of public lands in said state, and when such section has been sold or otherwise disposed of, other lands equivalent thereto and as contiguous as may be, shall be granted to said state for the use of schools." (Rec., 16-17.)

1852—All township lines of Township 47, Range 2 West, and the north township lines of Township 46, Range 2 and Range 3 West were run. (Rec., 17-18.)

1854—Treaty (10 Stat. 1109) whereby the Chippewas of Lake Superior ceded to the United States all their interest in certain *Minnesota* lands and whereby the United States agreed to set aside, among other reservations, the La Pointe Reser-

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vation in Wisconsin on ceded lands still subject to occupancy by the Chippewas under the treaty of 1842, and provided for survey and allotment in severalty from time to time on reservation lands in the discretion of the President. Within the outer boundaries of this reservation were included the sections 16 in question.

1858—Section lines in Township 47, Range 2, run in the field. (Rec., 18.)

1864—Sectional survey of Township 47, Range 2, became a completed administrative act as to this township. (Rec., 18.)

1873—Township and section lines in Township 46, Range 2, and Township 46, Range 3, surveyed and sectional survey became a completed administrative act as to these townships. (Rec., 18.)

1877—Decision in the case of *Beecher* v. *Wetherby*, 95 U. S., 517, rendered, establishing a rule of property under the Wisconsin Admission Compact in respect to school sections on an Indian reservation.

1880—Opinion of the Land Department and of the Indian Department informing the Wisconsin State Land Department, that under the Beecher case title to the Sections 16, in the La Pointe Reservation was vested in the state under the school grant subject to Indian occupancy. (Appendix, *infra*, pp. 95-97.)

1881 to
1887—Patents by the state to the grantor of defendant for all the land in question. (Rec., 19-25.)

1907—Allotment patents by the President of the United States to Indians in severalty under Article 3 of the Treaty of 1854 purporting to convey the fee (inalienable except with the consent of the President) to them and their heirs forever as to parts of the lands covered by the above state patents, under which defendant derived title. (Rec., 26, 29-30.)

1909 to
1912—Timber on the lands in dispute, which had been burned and blown down, was cut for sale by the J. S. Stearns Lumber Company under stipulation made with the approval of the United States, and the value of the timber so cut was deposited in National banks "for the benefit of the party finally entitled thereto." (Rec., 28.) The amount so deposited is $66,833.56. (Rec., 78.)

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STATEMENT OF APPELLEE'S CONTENTION.

The claim of J. S. Stearns Lumber Company to the lands in controversy (which are situated in three School Sections 16, in the La Pointe or Bad River Reservation in Wisconsin) is distinctly: Not that it is now vested with title *and right of possession*, but that by virtue of patents from the State of Wisconsin and mesne conveyances (all shown in the record) it is vested with the fee title subject *only* to the Indians' limited right of hunting, together with the other usual privileges of Indian occupancy, until the Indians are required to remove by the President of the United States.

The right to hunt and the other usual privileges of occupancy of the Indians do not extend to cutting and selling timber for commercial purposes; and the funds, which have arisen from the sale of burned and down timber and have been deposited, subject to agreements between appellant and appellee that they shall be paid over to the parties finally entitled thereto, belong to the J. S. Stearns Lumber Company.

The theory upon which appellee's claim is based is briefly as follows:

By the Chippewa treaty of 1842 (7 Stat., 591) the United States, through cession from the Indians, became vested with the conveyable fee to these lands, among others, subject only to Indian occupancy.

By the compact of admission in 1848 between the United States and the State of Wisconsin, that fee, still subject only to such Indian occupancy, passed to the state as a right *in rem* to attach *in re* upon identification by survey, unless *at the time of survey* that fee had been by the United States sold or otherwise disposed of. Such

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surveys of the sections here involved were completed in 1864 and 1873.

No "sale" of these lands by the United States was made prior to such surveys, or was ever made. Hence, the only question in this case is: Was the fee of the lands otherwise disposed of by the United States prior to survey?

The treaty of 1854, 10 Stat., 1109 (the only event which could be considered a disposition of the fee), provided for a reservation for the La Pointe band of Indians which included these lands within its outer boundaries. This treaty merely continued the right of occupancy as to reservation lands and created no right in or trust for the Indians in the fee. Such a reservation is not a disposition of the fee within the meaning of the school grant.

The treaty of 1854 also provided that, whenever necessary, the United States might cause the land to be surveyed and that the President might make such changes in the boundaries of, or otherwise in, the reserved tracts as "shall be necessary to prevent interference with *any* vested rights"; and gave to the President a discretionary power to allot, from time to time, reservation lands in severalty to Indian heads of families and individuals over the age of twenty-one. These allotment provisions prescribed a method of administration, but did not constitute a disposition or withdrawal of the fee of the reservation lands within the meaning of the school grant. The power of allotment was not exercised as to any sections 16 of reservation lands until over thirty years after survey.

Therefore, the treaty of 1854 did not operate to dispose of the fee which, on survey, vested in the state.

The patents in severalty issued in 1907 to individual

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Indians, purporting to dispose of the fee in these lands, are invalid, as against the state as the owner of the vested title in fee, subject only to the right of Indian occupancy.

The Indians' occupancy is a mere right of user. Timber, while standing, is a part of the fee, subject to any use on the premises by the tenant consistent with good husbandry, but not subject to sale by the tenant away from the premises. Timber when severed for commercial purposes is the property of the remainderman, not of the tenant; and the severance in this case, pursuant to agreement between all the parties interested, having been for commercial sale, in order to avoid a waste and injury to the fee, terminated occupancy as to the timber severed, and the funds arising from such sale, now deposited, pursuant to said agreement, "for the benefit of the party finally entitled thereto," are the property of the appellee as owner of the fee.

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ARGUMENT.

I.

The Treaty of 1842 Operated as a Complete Cession of All Indian Rights and Title and Vested Complete Transferable Fee Title in the United States, Leaving in the Indians, Only a Right to Hunt and the Other Usual Privileges of Occupancy, Until Required to Remove by the President.

Prior to 1842 the territory in the northern part of the present States of Wisconsin and Michigan was occupied almost entirely by Indians and held by them under their original title. (Stip. Facts I, Rec., 16.) The nature of this title and the powers of the United States in respect thereto are stated in *Holden* v. *Joy*, 17 Wall., 211-243 (1872), to be, briefly, an immemorial right of undisputed possession in the Indians, without power of sale or disposal except only to the United States.

It was the well-defined, "favorite policy of the Government to persuade all Indian tribes *east* of the Mississippi to migrate and settle on territory to be secured to them *west* of that river," (*Kansas Indians*, 5 Wall., 737-752), and in the exercise of its sole right of pre-emption to acquire their original title by purchase through treaties. Pursuant to this policy, the treaty of October 4, 1842 (7 Stat., 591), was entered into between the Chippewas of Lake Superior and the Mississippi River and the United States. As in numerous other similar treaties, entered into prior to 1871, when the United States changed its practice of dealing with the Indians as independent nations by special treaties (Indian Appropriation Act, March 3, 1871, 16 Stat., 566), the Indians, in consideration

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of money, goods and other benefits, ceded to the United States title to the lands from which their removal was desired, reserving to the tribe only the right of hunting and the other usual privileges of Indian occupancy until required to remove by executive order. These cessions were thus grants to the United States of the absolute *fee* simple title, subject only to a temporary right of occupancy in the Indians.

The Chippewa treaty of 1842 is in the form of a deed granting such a fee from the Indians to the United States, for a valuable consideration, subject only to a reservation of temporary occupancy, as follows:

The Grant. By Article 1, "The Chippewa Indians of the Mississippi and Lake Superior *cede to* the United States all the country within the following boundaries, viz.:" (Here follows a specific description of Wisconsin land and land on the west end of the upper Michigan peninsula, by metes and bounds, within which the sections 16 here in question are located.)

The Reservation of Occupancy. By Article 2, "The Indians stipulate for *the right of hunting on the ceded territory, with the other usual privileges of occupancy, until required to remove by the President of the United States.*"

The Consideration. By Article 3, "In consideration of the foregoing cession, the United States engaged to pay to the Chippewa Indians of the Mississippi River and Lake Superior, annually, for twenty-five years" $12,500 in specie and $23,700 in benefits; and within three years the sum of $75,000 for the satisfaction of their debts in the ceded district; and $15,000 as a provision for the half-breed relatives of the Indians—aggregating a total obligation of the United States in specie, goods and benefits of over $900,000. All of this was, in due course,

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complied with by the United States. (Stip. Facts IV, Rec., 16.)

By virtue of this treaty, then, the United States became vested with a *conveyable* fee to all the territory so ceded (including the lands in controversy) subject only to the terminable Indian privileges of hunting and occupancy.

The power of the United States to transfer this fee, subject to such occupancy, has been judicially established in a number of cases in this court.

Thus in *Johnson* v. *McIntosh*, 8 Wheat., 543 (1823), Chief Justice Marshall, in an exhaustive analysis of the historical precedents and legal principles relating to the title which the Government had obtained by acquisition or conquest from European nations, to land under Indian occupancy, said (p. 574):

> "While the different nations of Europe respected the right of the natives, as occupants, they asserted the ultimate dominion to be in themselves; and claimed and exercised, as a consequence of this ultimate dominion, a power to grant the soil, while yet in possession of the natives. *These grants have been understood by all, to convey a title to the grantees, subject only to the Indian right of occupancy.*
>
> The history of America, from its discovery to the present day, proves, we think, the universal recognition of these principles."*

In *Clark* v. *Smith*, 13 Pet., 194-201 (1839), Justice Catron, similarly said:

> "The ultimate fee (incumbered with the Indian right of occupancy) was in the crown previous to the Revolution, and in the States of the Union afterwards, *and subject to grant*. This right of occupancy was protected by the political power, and respected by the courts until extinguished; when the patentee took the unincumbered fee. So this court, and the state courts, have uniformly and often holden. 6 Cranch, 87; 9 Cranch, 11."

*Unless otherwise indicated all italics used in quotations are ours.

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In *Buttz* v. *Northern Pacific Railroad*, 119 U. S., 55-66 (1886), this court, by Justice Field, said:

> "The land in controversy and other lands in Dakota, through which the Northern Pacific Railroad was to be constructed, was within what is known as Indian country. At the time the Act of July 2nd, 1864, was passed, the title of the Indian tribes was not extinguished. But that fact did not prevent the grant of Congress from operating to pass the fee of the land to the company. The fee was in the United States. The Indians had merely a right of occupancy, a right to use the land, subject to the dominion and control of the Government. *The grant conveyed the fee subject to this right of occupancy.* The Railroad Company took the property with this incumbrance."

See, also, *Beecher* v. *Wetherby*, 95 U. S., 517-525 (1877), and other cases hereinafter fully discussed.

II.

The Right of Hunting and the Privileges of Occupancy Retained in the Indians Under the Treaty of 1842 Gave Them a Mere Right of User of, and Not a Right or Title to, the Land Itself or the Timber Thereon.

The lands in question are timber lands not agricultural lands.

The right of Indian occupancy as against the owner of the fee is a limited right. The Indians may hunt upon the lands or use the lands for the purpose of agriculture, or in any other manner consistent with the rights of the owner of the remainder. They (that is, the tribe or band, not the individuals) may in good faith clear the premises of the timber for any use consistent with good husbandry where cutting the timber is the incidental not the primary purpose. In these respects their right of possession and occupancy has been said to be unlimited. But,

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as against the United States or a grantee of the fee held by it in the lands, they may not cut the timber for sale or other use off the premises or otherwise commit waste. *United States* v. *Cook*, 19 Wall., 591 (1873); *Beecher* v. *Wetherby, supra; Schulenberg* v. *Harriman*, 21 Wall., 44 (1874); *United States* v. *Loughrey*, 172 U. S., 206 (1898); *Starr* v. *Campbell*, 208 U. S., 527 (1908).

In the Cook case, by a treaty made in 1831 the Menominee Indians ceded to the United States certain of their lands in Wisconsin as a home for such of the New York Indians as might remove and settle upon them, it being stipulated that the New York Indians should hold the ceded lands under such tenure as the Menominee Indians held them, subject to such regulations and alterations of tenure as Congress and the President might direct. In 1838 the Oneida Indians, one of the bands of New York Indians to whom a part of the cession had been apportioned, ceded to the United States all the land set apart to them excepting a tract of about 65,000 acres, to be held as other Indian lands are held. Provisions for allotment to individual Indians were contained in Article 2 of the treaty (Opinion, p. 592; 7 Stat., 566), and the United States agreed to survey the reserved tract as soon as practicable. (Article 3.) *The condition of the title to the reservation lands, therefore, was substantially the same in the Cook case as in the present case.* Parts of this tract so reserved had been occupied and cultivated by individual members of the tribe in severalty with the consent of the tribe. Certain of the Indians *cut from a part of the reservation not occupied in severalty* some timber, made it into saw logs, removed it from the reservation and sold it to a certain George Cook. The United States, as the holder of the fee title, which had never been disposed of by it, brought an action of replevin against Cook for the logs; and upon a division

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of opinion in the lower court the case was certified to this court, which held that the action was properly brought and could be maintained.

On pages 592-594 the court said:

"The right of the Indians in the land from which the logs were taken was that of occupancy alone. They had no power of alienation except to the United States. *The fee was in the United States subject only to this right of occupancy.* This is the title by which other Indians hold their lands. It was so decided by this court as early as 1823 in *Johnson* v. *McIntosh.* The authority of that case has never been doubted. The right of the Indians to their occupancy is as sacred as that of the United States to the fee, *but it is only a right of occupancy.* The possession when abandoned by the Indians, attaches itself to the fee without further grant.

This right of use and occupancy by the Indians is unlimited. They may exercise it at their discretion. If the lands in a state of nature are not in a condition for profitable use, they may be made so. If desired for the purposes of agriculture, they may be cleared of their timber to such an extent as may be reasonable under the circumstances. The timber taken off by the Indians in such clearing may be sold by them. But to justify any cutting of the timber, except for use upon the premises, as timber or its product, it must be done in good faith for the improvement of the land. *The improvement must be the principal thing, and the cutting of the timber the incident only.* Any cutting beyond this would be waste and unauthorized.

The timber while standing is a part of the realty, and it can only be sold as the land could be. The land cannot be sold by the Indians, and consequently the timber, until rightly severed, cannot be. *It can be rightfully severed for the purpose of improving the land, or the better adapting it to convenient occupation, but for no other purpose.* When rightfully severed it is no longer a part of the land, and there is no restriction upon its sale. Its severance under such circumstances is, in effect, only a legitimate use of the land. In theory, at least, the

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land is better and more valuable with the timber off than with it on. It has been improved by the removal. If the timber should be severed for the purposes of sale alone—in other words, if the cutting of the timber was the principal thing and not the incident—then the cutting would be wrongful, and the timber, when cut, become the absolute property of the United States.

These are familiar principles in this country and well settled, as applicable to tenants for life and remaindermen. But a tenant for life has all the rights of occupancy in the lands of a remainderman. The Indians have the same rights in the lands of their reservations. What a tenant for life may do upon the lands of a remainderman the Indians may do upon their reservations, *but no more.*

In this case it is not pretended that the timber from which the saw logs were made was cut for the purpose of improving the land. It was not taken from any portion of the land which was occupied, or, so far as appears, intended to be occupied for any purpose inconsistent with the continued presence of the timber. It was cut for sale and nothing else. Under such circumstances, when cut, it became the property of the United States absolutely, discharged of any rights of the Indians therein. The cutting was waste, and in accordance with well-settled principles, the owner of the fee may seize the timber cut, arrest it by replevin, or proceed in trover for its conversion."

Therefore, on the basis of the facts in the case at bar, and of the authorities cited, at the time of the admission of Wisconsin in 1848:

(a) The United States had a conveyable remainder in fee in the lands; and

(b) The Indians had only a right of tribal occupancy terminable at any time by the President, and no right to the timber for commercial purposes.

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III.

By Virtue of the Compact of Admission Between the State of Wisconsin and the United States in 1848, the United States Promised to the State Sections 16 of Public Lands for School Purposes Unless Sold or Otherwise Disposed of at the Date of Survey.

(a) *The Facts in Regard to the Admission of Wisconsin and the Provisions of Its School Grant.*

In 1846 Congress passed an enabling act (9 Stat. 56) wherein it made the proposition, which, if accepted by the state, should become obligatory upon the United States, that "sections numbered sixteen in every township of public lands in said state, and where such section has been sold or otherwise disposed of, other lands equivalent thereto and as contiguous as may be, *shall be granted to said state for the use of schools.*" (Stip. Facts V, Rec., 16.)

On February 1, 1848, Wisconsin, by convention, adopted a constitution, and "accepted, ratified and confirmed," the propositions of the enabling act, including the one above mentioned, and on March 2, 1848, the constitution so adopted was ratified by vote of the people of the territory. (Stip. Facts VI, Rec., 17.)

On May 29, 1848, by act of Congress (9 Stat. 233) Wisconsin was admitted to the Union as a state, on an equal footing in all respects whatsoever with the original states (Stip. Facts VII, Rec., 17), and the proposition in reference to school sections sixteen became a binding compact.

(b) *Legal Meaning of the School Grant.*

There can be no controversy between the parties hereto as to the meaning of this school grant clause. This

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court has determined it time and again to be not a grant *in praesenti* of unsurveyed school sections, but a promise by the United States that title thereto shall, without further act or grant, vest in the state on identification by survey, unless upon such identification such sections shall have been previously "sold or otherwise disposed of" by the United States.

A leading case so fixing the meaning of the school grant is *Cooper* v. *Roberts*, 18 How., 173 (1855), where this court said (p. 179):

> "We agree, that until the survey of the township and the designation of the specific section, the right of the State rests in compact—binding, it is true, the public faith, and dependent for execution upon the political authorities. Courts of justice have no authority to mark out and define the land which shall be subject to the grant. But when the political authorities have performed this duty, the compact has an object, upon which it can attach, and if there is no legal impediment the title of the State becomes a legal title. The *jus ad rem* by the performance of that executive act becomes a *jus in re*, judicial in its nature, and under the cognizance and protection of the judicial authorities, as well as the others. *Gaines* v. *Nicholson*, 9 How., 356."

In the late case of *United States* v. *Morrison*, 240 U. S., 192 (decided February 1, 1916), this court said:

> "It [the school grant] covered other dispositions, whether prior or subsequent [to admission] if made before the land had been appropriately identified by survey and title had passed. (p. 205.) The act of admission with its clause in respect to school lands was not a promise by Congress that under all circumstances, either then or in the future, these specific school sections were or should become the property of the State. The possibility of other disposition was contemplated, the right of Congress to make it was recognized, and provision made for a selection of other lands in lieu thereof. (p. 209.) * * * the lands could be disposed of un-

der authority of Congress at any time before the survey became a completed administrative act." (p. 212.)

See, also, *Heydenfeldt* v. *Daney Gold, etc., Mining Co.*, 93 U. S., 634; *Beecher* v. *Wetherby* and other cases hereinafter reviewed.

(c) *The Facts in Regard to Sectional Surveys of the Lands in Controversy.*

The stipulation of facts shows that the lands in controversy were not fully surveyed at the date of the state's admission; that the survey of Section 16, Township 47 North, Range 2 West (in which part of the lands in controversy is located), was a completed administrative act at least as early as September 23, 1864, though the survey was made in August and September, 1858; and that the surveys of the two other Sections 16 in Township 46 North, Ranges 2 and 3 West (in which the remainder of the lands in controversy is located), were completed administrative acts on September 20 and October 18, 1873, although the surveys were made in May and June of that year. (Plats in Evidence and Stip. Facts XI and XII, Rec., 17-19.)

In assignment of error IV (Rec., 82-83) counsel for appellant states that the court erred in not holding that, under the school grant, title did not vest in any particular section until sectional survey had been made "and such survey had been approved by the surveyor general and accepted by the Commissioner of the General Land Office."

In the first place the District Court did not hold that title vested before sectional survey, and we admit that title could not so vest, under the definition of the school grant announced by this court in the cases heretofore cited.

In the next place under the law as it existed at the time these surveys were made and until April 17, 1879, such surveys became final and effective when the plats thereof were approved and filed by the surveyor general in the local land office. The specific approval of the commissioner of the general land office was not at that time a prerequisite to their effectiveness. (*Tubbs* v. *Wilhoit*, 138 U. S., 134.) Therefore, on the question of the time when the surveys became final and effective assignment of error IV is a misconception of the law, and in this connection we may here add that the case of *United States* v. *Morrison*, 240 U. S., 192, is not a governing authority on the similar question there discussed, because in that case the surveys were made after April 17, 1879, under the order of the Land Department requiring approval of the commissioner before they became effective.

With the definition of the school grant firmly fixed, the fundamental question in the case at bar is: Had the fee simple title, subject to Indian occupancy, so vested in the United States as to the Sections 16 in controversy, been sold or otherwise disposed of by the United States at the date when the surveys identifying these sections became completed administrative acts?

IV.

When the Surveys Became Completed Administrative Acts, the Title in Fee to the Lands in Question (Subject to Indian Occupancy) Was in the United States and Had Not Been Sold or Otherwise Disposed of, and, Therefore, Such Title, Subject to Indian Occupancy, Then Vested in the State of Wisconsin, and Was Thereafter Not Subject to Sale or Other Disposition or Impairment.

Under the school grants, no patent or other form of conveyance is necessary. (*Gaines* v. *Nicholson*, 9 How.,

356; *Callanan* v. *C. M. & St. P.*, 10 L. D., 285; *Warren* v. *Colorado*, 14 L. D., 681.) Hence, on survey the school grant is self-executing and vests in the state whatever title then exists in the United States, unsold or otherwise undisposed of.

None of the lands have ever been "sold." About this there is no controversy. Hence the only question in this case is: Were these lands "otherwise disposed of" prior to survey?

The meaning of these words, "otherwise disposed of," has been fixed by this court as follows:

> "Sale, necessarily signifying a legal sale by a competent authority, is a disposition, final and irrevocable, of the land. The phrase 'or otherwise disposed of' must signify some disposition of the property equally efficient and equally incompatible with any right of the state present or potential." (*Ham* v. *Missouri*, 18 How., 126, 1855.)

Between the date of the compact of admission in 1848 and the time when the surveys became completed administrative acts in 1864 and 1873, only one thing happened to raise any question whether the fee title was disposed of within the meaning of the school grant. This was the treaty of September 30, 1854, made between the Chippewa Indians of the Mississippi and Lake Superior and the United States. (10 Stat., 1109.)

The purpose of this treaty was the same as in numerous other similar negotiations between the Government and the Indians. The Chippewas, or certain bands of them, did not wish to leave their old localities, and the administration, desiring to remove the Indians westward out of territory which was gradually becoming settled by white inhabitants, a compromise resulted whereby the Government removed all it could induce to leave and restricted the remainder to reservations. The general right of occupancy was thus shrunk from one large area

to several small areas, but *no greater right in these reservations was given to the Indian bands than the tribe had formerly had in the larger area. They still had the right of occupancy, but it was still only occupancy.*

As this court distinctly said in *U. S.* v. *Thomas,* 151 U. S., 577, 584:

> "The treaty [that is, this same treaty of 1854] did not operate to defeat this prior right of occupancy to that particular section [which was a Section 16] but, by including it in the new reservations, made as a condition of the cessions in Wisconsin, *continued it in force.*"

The provisions of the treaty of 1854, in so far as material, at this point, are as follows:

By Article 1 of the treaty the Lake Superior Chippewas ceded to the United States all the lands, theretofore subject to Indian occupancy in common with the Chippewas of the Mississippi, *east* of a generally north and south boundary line therein described. This cession embraced a territory in Minnesota; and did not include the lands here in controversy. By the same article the Mississippi Chippewas consented to the cession and the Lake Superior Chippewas relinquished to the Mississippi Chippewas all their interest in and claims to the land theretofore held by them in common lying *west* of the boundary line above referred to.

Article 2 of the treaty contains, as a part consideration for the cession by the Lake Superior Chippewas, *an agreement* by the United States "to set apart and withhold from sale for the use of the Chippewas of Lake Superior the following described tracts of land," located within the territory ceded to the United States by the prior treaty of 1842. Clauses 1st, 2nd, 3rd, 4th, 5th and 6th of Article 2 describe the reservations for separate bands of Indians which the United States so agreed to set apart. Some of them were described and

identified by specific metes and bounds, naming natural monuments; others were mere designations of an unidentified and unlocated quantity of land; and others were described, wholly or partly, by terms of rectangular survey. The La Pointe or Bad River Indians were a band of the Lake Superior Chippewas and their reservation in which the sixteens here involved are located, was described in clause 2nd, partly by natural objects and partly by lines of rectangular survey, some of which were not run till 1873, when the final sectional survey was made and the sixteens here in question completely located. Thus a survey was necessary to definitely locate those of the reserved tracts which were wholly or partly described by lines of rectangular survey not run at the time of the treaty.

Clause 6 of Article 2 contained a grant to Chief Buffalo by name. This was the only specific grant to an individual in the treaty and constituted, as decided in the *Prentice cases* (20 Fed., 819, 43 Fed., 270, 113 U. S., 435, 58 Fed., 437, and 154 U. S., 163) an assignable right *in praesenti* needing only a location to identify the land to which it attached. This right did not refer to any reservation but to the ceded territory generally. It was not intended by the treaty that the Chief should have the right to select reserved territory and, as a matter of fact, when the selection was eventually made it was not within the limits of any reservation. (See *Prentice cases, supra.*) This clause and the following are not directly involved in this case but attention is called to their positive terms in contrast with the indefinite discretion given by Article 3 to the President in reference to general allotments to full-bloods on reservation lands. (*Infra,* p. 21.)

Clause 7th of Article 2, although by its terms it did not create a vested right to any particular land, did create an

affirmative right of selection and patent in Indians of the mixed blood "belonging to the Chippewas of Lake Superior," who at the time of the treaty were heads of families or single persons over the age of twenty-one, by providing that they "shall be *entitled* to eight acres of land to be *selected* by them under the direction of the President, which *shall be secured to them by patent* in the usual form." The location of this clause in Article 2 clearly indicates the intention of the parties to the treaty that mixed blood allotments should be confined to lands in the ceded country outside the reservations. The article is devoted solely to the distribution of portions of the ceded territory (covered by the treaties of 1842 and 1854) for particular bands of Indians, their chiefs and dependents, not to the distribution or allotment of the lands within such portions set apart for reservations and the like. The same intention is also evidenced by the direct and express grant in Clause 7 "entitling" each half-breed to eighty acres of land to be selected by him under the President's direction; whereas in the following article, which clearly relates exclusively to the reserved tracts, no such direct and express right is given to Indians. Furthermore, under this 7th clause the so-called Chippewa half-breed scrip was issued in large amounts and under such scrip the particularly named half-breed was declared to be "entitled to select *from any vacant lands, surveyed or unsurveyed, which were ceded to the United States by said treaty of September* 30, 1854," and by other treaties. (See Half-breed Scrip, Chippewas of Lake Superior, Govt. Prtg. Office, 1874, pp. 35-37; House Ex. Doc. 193, 42nd Congress, 2nd Session). The lands so ceded by the treaty of 1854 were, it will be remembered, in Minnesota.

This brings us to the provisions of Article 3 of the treaty which clearly relate to assignments and patents upon the reservations and to Indians of the full blood.

It is the article under which the Indian patents in severalty in this case were issued by the President. The patents themselves exclude the idea that they were issued under any other section or provision of the treaty or under any Act of Congress, because each of them recites "the President in accordance with the provisions of Article 3 of said treaty" approves the selection of [naming the particular Indian] and the United States of America in consideration of the premises and in conformity with said treaty grants the tract of land to the named Indian and his heirs forever, with a prohibition against alienation except with the President's consent. (Rec., 29-30.)

This Article 3 in terms provides as follows:

(a) "The United States will define the boundaries of these *reserved tracts*, whenever it may be necessary, *by actual survey;* and

(b) "The President *may*, from time to time, *at his discretion*, cause the whole [meaning clearly 'of these reserved tracts'] to be surveyed; and

(c) "He *may* assign to each head of a family or single person over twenty-one years of age eighty acres of land for his or their separate use; and

(d) "He *may, at his discretion*, as fast as the *occupants* become capable of transacting their own affairs, issue patent therefor to such occupants with such restrictions of the power of alienation as he *may* see fit to impose; and

(e) "He *may also, at his discretion*, make rules and regulations respecting the disposition of the lands in case of the death of a head of a family or single person occupying the same, or in case of its abandonment by them; and

(f) "He *may* also assign other lands in exchange for mineral lands, if any such are found in the tracts herein set apart; and

(g) "He may also make such changes in the boundaries of such *reserved tracts* or *otherwise as shall be necessary to prevent interference with any vested rights.*"

At the time of the survey (1864 and 1873) no assignments in severalty had been made and no patents had been issued by the President on any of the sixteens in the reservation. No such patents were issued or attempted to be issued until the year 1907, some thirty years after survey. (Stip. Facts, XXI-XXV and XXVII, Rec., 26-27, 28.)

Bearing constantly in mind that our claim is not that the defendant Company is entitled now to possession of the lands in the sixteens within the reservation, but that its title thereto is the fee subject to the right of tribal occupancy, because the fee had not been sold or otherwise disposed of at the date of survey, we submit that the following propositions, which we shall discuss in detail in the following divisions of this brief, are true, and that the treaty does not constitute a disposition of the fee of the land as against the school grant:

(1) The creation of the reservation for the La Pointe band by Clause 2 of Article 2 of the treaty of 1854 did not effect a disposition of the ultimate fee which vested in the state on survey in 1864 and 1873.

(2) The provisions in relation to allotment of reservation lands in severalty under the treaty of 1854 created no right in or trust for the Indians, individually or as a tribe and did not operate to dispose of the ultimate fee; and their exercise was subject to vested rights as they appeared on survey.

(3) By the provisions for discretionary allotment by the President, the fee of the reservation lands was not withdrawn or reserved for a governmental purpose so as to defeat the operation of the school grant; and since that fee vested in the state on survey, it could thereafter not be transferred by allotment to Indians.

V.

The Creation (Prior to Survey) of the Reservation for the La Pointe Band Under the Provisions of Clause 2 of Article 2 of the Treaty of 1854 Did Not Effect a Disposition of the Ultimate Fee.

That the creation of such a reservation is not such a disposition as would prevent the fee to the lands vesting in the state, subject to occupancy, under the school grant is clear from the decisions of this court and of the Land Department, both of which we will now consider.

The case of BEECHER v. WETHERBY, 95 U. S., 517 (1877), is conclusive on this score. It is, we think, precisely in point on the facts and *passed upon the same provisions of the Wisconsin Enabling Act, Constitution and Act of Admission in reference to a school section in an Indian reservation set aside under a treaty contemporaneous with the treaty of* 1854, *and at a time when the lands were subject to Indian rights of occupancy reserved in a prior treaty.* It was an action of replevin by Beecher to recover from Wetherby and others saw logs cut and taken by the defendants in 1872 and 1873 from Section 16, Township 28, Range 14 East, in Wisconsin. The plaintiff asserted title under patents from the United States, bearing date October 10, 1872, and the defendants under prior patents from the state, dated December 15, 1865, and December 26, 1870. The lands in question were included within the Menominee Indian lands, whose boundaries were fixed by a treaty made in the year 1825 (7 Stat. 272) and ratified by treaty made in 1831 (7 Stat. 342). The latter treaty confirmed the boundaries defined in the former treaty and contained a proviso that two townships on the east side of Lake Winnebago should be ceded for the use of the Stockbridge and Munsee Indians.

The Section 16 in controversy was not within those two townships but within the two townships later set aside out of the Menominee reservation under the treaty of 1854, hereinafter mentioned. By treaty concluded in 1848 (9 Stat. 952), the Menominees *ceded* to the United States *all* their lands in Wisconsin, but stipulated that they should be permitted to remain on the ceded land for a period of two years *and* until the President should notify them that the lands were wanted. Wisconsin was admitted to the Union in 1848.

In 1854 (10 Stat. 1064) another treaty was made with the Menominees amending the treaty of 1848, which recited that certain Indians desired to remain in the State of Wisconsin instead of being removed beyond the Mississippi. By this treaty there was set aside to them, as a "*permanent*" home and reservation, "to be held as other Indian lands are held," twelve townships particularly described. Within this reservation two townships were afterwards by treaties made in 1856 (11 Stat., 679-663; 95 U. S., 527) set apart as a reservation for the Stockbridge and Munsee Indians, wherein was included the section sixteen in question. Thereafter, pursuant to an act of Congress passed in 1871, *but after survey*, which was made in 1854, the townships set apart for the Munsee and Stockbridge Indians, including the sections in question, were attempted to be sold by the United States for the relief of the Indians and the plaintiff deraigned title under United States patents issued pursuant to this act.

Upon the facts in the Beecher case this court held that the plaintiff, a patentee of the United States after survey, acquired, as against the state's patentee of a school section, no title from the United States and no property in the timber cut, and, therefore, that his action for replevin would not lie.

This case is so important that we take the liberty of quoting extensively from the opinion. The court said (p. 524):

"In this case, the township embracing the land in question was surveyed in October, 1852, and was subdivided into sections in May and June, 1854. *With this identification of the section the title of the state, upon the authority cited, became complete, unless there had been a sale or other disposition of the property by the United States previous to the compact with the state. No subsequent sale or other disposition, as already stated, could defeat the appropriation. The plaintiff contends that there had been a prior reservation of the land to the use of the Menominee tribe of Indians.*

It is true that, for many years before Wisconsin became a state, that tribe occupied various portions of her territory, and roamed over nearly the whole of it. In 1825, the United States undertook to settle by treaty the boundaries of lands claimed by different tribes of Indians, as between themselves, and agreed to recognize the boundaries thus established, the tribes acknowledging the general controlling power of the United States, and disclaiming all dependence upon and connection with any other power. The land thus recognized as belonging to the Menomonee tribe embraced the section in controversy in this case. Subsequently, in 1831, the same boundaries were again recognized. *But the right which the Indians held was only that of occupancy. The fee was in the United States, subject to that right, and could be transferred by them whenever they chose. The grantee, it is true, would take only the naked fee, and could not disturb the occupancy of the Indians;* that occupancy could only be interfered with or determined by the United States. It is to be presumed that in this matter the United States would be governed by such considerations of justice as would control a Christian people in their treatment of an ignorant and dependent race. Be that as it may, the propriety or justice of their action towards the Indians with respect to their lands is a question of governmental policy, and is not a matter open to discussion in a controversy between third

parties, neither of whom derives title from the Indians. *The right of the United States to dispose of the fee of lands occupied by them has always been recognized by this court from the foundation of the government.* It was so ruled in *Johnson* v. *McIntosh*, 8 Wheat., 543, in 1823; and in *United States* v. *Cook*, 19 Wall., 591, in 1873. Other cases between those periods have affirmed the same doctrine. *Clark* v. *Smith*, 13 Pet., 195. See also *Jackson* v. *Hudson*, 3 Johns. (N. Y.), 375; *Veeder et al.* v. *Guppy*, 3 Wis., 502; and 8 Opin. Atty Gen., pp. 262-264. In *United States* v. *Cook*, the United States maintained replevin for timber cut and sold by Indians on land reserved to them, the court observing that the fee was in the United States, and only a right of occupancy in the Indians; that this was the title by which other Indians held their land, and that the authority of *Johnson* v. *McIntosh* on this point had never been doubted. But, added the court, 'the right of the Indians to their occupancy is as sacred as that of the United States to the fee but it is only a right of occupancy. The possession, when abandoned by the Indians, attaches itself to the fee without further grant.'

In the construction of grants supposed to embrace lands in the occupation of Indians, questions have arisen whether Congress intended to transfer the fee, or otherwise; *but the power of the United States to make such transfer has in no instance been denied.* In the present case, there can hardly be a doubt that Congress intended to vest in the state the fee to section 16 in every township, subject, it is true, as in all other cases of grants of public lands, to the existing occupancy of the Indians so long as that occupancy should continue. The greater part of the state was, at the date of the compact, occupied by different tribes, and the grant of sections in other portions would have been comparatively of little value. Congress undoubtedly expected that at no distant day the state would be settled by white people, and the semi-barbarous condition of the Indian tribes would give place to the higher civilization of our race; and it contemplated by its benefactions to carry out in that state, as in other states, 'its ancient and honored policy' of devoting the cen-

tral section in every township for the education of the people. Accordingly, soon after the admission of the state into the Union, means were taken for the extinguishment of the Indian title. In less than eight months afterwards the principal tribe, the Menominees, by treaty, ceded to the United States all their lands in Wisconsin, though permitted to remain on them for the period of two years, and until the President should give notice that they were wanted. 9 Stat., 952.

It is true that subsequently, the Indians being unwilling to leave the state, the President permitted their temporary occupation of lands upon Wolf and Oconto Rivers, and in 1853 the state gave its assent to the occupation; and in May, 1854, the United States, by treaty, ceded to them certain lands for a permanent home, the treaty taking effect upon its ratification in August of that year; and afterwards a portion of these lands was, by another treaty, ceded to the Stockbridge and Munsee tribes. But when the logs in suit were cut, those tribes had removed from the land in controversy, and other sections had been set apart for their occupation.

The act of Congress of Feb. 6, 1871, *authorizing a sale of the townships occupied by the Stockbridge and Munsee tribes must, therefore, be held to apply only to those portions which were outside of sections* 16. *It will not be supposed that Congress intended to authorize a sale of land which it had previously disposed of. The appropriation of the sections to the state, as already stated, set them apart from the mass of public property which could be subjected to sale by its direction.*

It follows that the plaintiff acquired no title by his patents to the land in question, and, of course, no property in the timber cut from it."

BY A COMPARISON OF THE FACTS IN THE BEECHER CASE AS THEY APPEAR IN THE OPINION WITH THE FACTS IN THE CASE AT BAR APPEARING IN THE CHRONOLOGICAL TABLE (*ante*, p. 1), IT WILL BE SEEN:

1. That the conditions of title to the Indian Reservation lands in the Beecher case were exactly the same as

the conditions of title to the Indian Reservation lands in the instant case. In both cases as a part of the general policy of the United States to remove the Indians east of the Mississippi River west of that river, the Indian tribes ceded by treaty to the United States for valuable considerations, which were eventually paid, all their lands east of the Mississippi River, reserving, however, the right of occupancy until removal by the President. In both cases certain bands of the Indian tribes, who had made the treaties previously mentioned, desiring to remain in their old homes, requested the United States to allow them to remain, and the United States thereupon by treaty agreed to set aside, out of the lands theretofore ceded and still subject to the right of occupancy, certain reservations for the use of those bands as permanent homes. In both cases the lands in controversy therein (being sections 16 or parts thereof) fell within the limits of the reservations thus agreed to be made.

2. That in neither case was there a cession of the lands in trust or a cession of title upon condition.

3. That in neither case were the townships fully sectionized at the date of the respective treaties agreeing to set aside the reservation, though in both cases township lines had been run, *and that at the time of survey in each case the land was subject to tribal occupancy only and the fee was in the United States, pledged to the state and not otherwise disposed of.*

4. That in both the Beecher case and in the instant case patents of the United States for lands in sections 16 included in the reservations were issued by the United States several years after survey and in derogation of the claims of the State of Wisconsin under its school grant, pursuant to which the State had theretofore issued patents for the same lands.

It is true that the treaty in the Beecher case, dated

in May, 1854, was not proclaimed till August, 1854, and that the surveys were completed in June. But this is not a distinguishing circumstance between that case and the one at bar; because at final survey the condition of the fee title was the same in both cases. In the Beecher case, irrespective of the question whether the treaty of 1854 took effect prior or subsequent to survey, the fee title was continuously subject to Indian occupancy until the Act of 1871, first under the original Indian right of occupancy and then consecutively under the treaties of 1825, 1831 and 1848 recognizing and preserving that right of occupancy, which was continued as to the reservation set aside under the treaty of 1854, and under the treaties of 1856. So under the circumstances in both cases the conveyable fee, on survey, was undisposed of in the United States, but subject to reservation occupancy.

It is true, also, that no express allotment provisions were contained in the treaties, or existed in statutes, respecting the reservation lands in the Beecher case; whereas, in the present case Article 3 of the treaty of 1854 made provision for allotments in severalty; and that this differentiates the two cases. The nature and effect of the allotment provisions in the present case are fully dealt with later in this brief (*infra*, p. 64 *et seq.*) and shown, we believe, not to create a trust for or right in the Indians, as a tribe or as individuals, or the appropriation of the fee to a governmental purpose. But it is well perhaps, at this point, to call to the court's attention that the absence of express provision in a treaty or statute for allotment in severalty, does not imply the absence of the power in the United States (as owner of the conveyable fee, with full right, at all times, to terminate tribal occupancy) to dispose of reservation lands in severalty by allotment or otherwise. The provisions for allotment in severalty in a treaty or statute (except per-

haps in special instances where vested rights in Indians are actually created by the treaty itself) do not, of themselves, create the right or power of the United States to allot. That right or power exists by virtue of and is an incident to the ownership of the conveyable fee, remaining in the United States, and treaty or statutory provisions for allotment such as those contained in the treaty of 1854 in respect to full bloods on the reservations, do no more than legislatively prescribe the administrative machinery for the exercise of the existing power to allot. They do not themselves amount to a disposition, or an appropriation of the land to a purpose. (*U. S.* v. *Rowell*, 243 U. S., 464.) Hence, in case at the time of an attempted allotment under such provisions, it is found (as in this case on survey) that the United States has already disposed of the fee, they are not exercisable at all.

It has also been urged that the express language in the treaty of 1854 "agree to set apart and *withhold* from sale for the use of the Chippewas" the reserved tracts, operated as a disposition of the lands as against the school grant. Such, however, is not the case, because:

1. The words "withhold from sale for the use of the Chippewas" appropriately apply to sales by the United States under general laws as in pre-emption where right of possession and occupation pass to the vendee, not to donations by it to the state for public schools where title may pass, but right of possession may be suspended pending Indian occupancy so that their "use" of the land is not interfered with.

2. The language of the Chippewa treaty of 1854 and the language of the Menominee treaty of the same year in the Beecher case are in effect the same though in the latter treaty the words "withhold from sale" do not appear.

The language in the Chippewa treaty of 1854 is in this respect as follows:

> "The United States agrees to set apart and withhold from sale for the *use* of the Chippewas of Lake Superior, the following described tracts of land" (Art., 2), and
>
> "All annuity payments to the Chippewas shall hereafter be made at L'Anse, La Pointe, Grand Portage, and on the St. Louis River, and the Indians shall not be required to remove from the homes hereby set apart for them." (Art. 11.)

The Menominee treaty of 1854 is as follows:

> "Now, therefore, to render practicable the stipulated payments herein recited, and to make exchange of the lands given west of the Mississippi for those desired by the tribe, and for the purpose of giving them the same for a *permanent home,* these articles are entered into."
>
> "The United States agree to give and do hereby give to said Indians *for a home, to be held as other Indian lands are held,* that tract of country lying," etc. (Art. 2.)

In the Chippewa treaty the lands were set "apart and withheld from sale" for the use of the Indians and the United States agreed that they should not be required to remove from the homes thereby set apart for them.

In the Menominee treaty the lands were "set apart" for a *permanent* home to be held as other Indian lands were held.

There can be no question that, though different words are used in each treaty, the provisions of both treaties, made under almost identical circumstances and for the same purpose, mean and were intended to mean the same thing, viz: the setting apart of reservations for Indian use and occupation in Wisconsin, their old home, instead of removing the tribes beyond the Mississippi as contemplated by and agreed upon in the prior treaties with the same tribes. No special virtue is added to the Chippewa treaty by the use of the words "withhold from sale."

If, as this court decided in the Beecher case, the reservation and occupancy existing at the time of survey did not operate as a disposition by the United States of the lands involved therein; and notwithstanding the reservation and occupancy the title to the fee in sections 16 vested on survey in the State of Wisconsin subject only to Indian occupancy, then the conclusion cannot be escaped that the treaty of 1854, in this case, made prior to survey and providing for a reservation in favor of the La Pointe band, did not operate as a disposition by the United States of the lands embraced therein and that when the lands were surveyed the title to the fee in sections 16 became vested in the State of Wisconsin subject only to the right of Indian occupancy.

VI.

Beecher v. Wetherby Established a Rule of Property Under the Wisconsin Compact with the United States Upon Which Parties Have in Good Faith Relied for Years and Should be Adhered to.

The case as shown above interpreted and determined the meaning of the Wisconsin compact with the United States as to school lands in reference to treaties, governmental Indian policies and other circumstances, contemporaneous with the treaties involved in the present case.

It was decided in 1877, only four years after the last of the Sections 16 involved herein were finally surveyed.

In 1880 (as appears from the opinions of the Department of Indian Affairs and of the General Land Office, see Appendix hereto, p. 95) the Chief Clerk of the Department of Public Lands of the State of Wisconsin "requested to be informed relative to the title to and pos-

session of Section 16 in Township 46, North, Range 2 West and Townships 46 and 47 North of Range 3 West," in the La Pointe Indian Reservation. Two of these sections are involved in this suit. Upon this request the Commissioner of Indian Affairs and the Commissioner of the General Land Office, basing their opinion on the decision in *Beecher* v. *Wetherby*, informed the Chief Clerk of the Wisconsin Land Department that "the title of the Indians to the lands embraced in said Reservation is only that of occupancy, and that the fee to the 16th sections referred to is in the State, subject to the right of occupancy by the said Indians." (See Appendix.)

In 1881, the patents from the state which are the basis of defendant's title in the present case began to be issued and continued to be issued from then on until 1887. (Stip. Facts XII-XIX, Rec., 19-25.)

It therefore appears that the state relied upon the decision of *Beecher* v. *Wetherby* and upon the particular rulings of the Land and Indian Departments above referred to, as the basis of its rights to issue patents after 1880.

No interference with the fee title of the state or its grantees, or by the Indians, or by the Federal Government occurred, and no adverse claim was asserted against the state or its grantees, until shortly before the year 1904, when the United States, through the Secretary of the Interior, set up claims on behalf of the La Pointe Indians, denied the title of the J. S. Stearns Lumber Company, and forbade the cutting of timber on the Sections 16 in question. (Rec., 27.) The state in the meantime frequently exercised full rights of ownership; not only by the issuance of patents, but by levying taxes upon the properties and collecting them from its successive grantees, including the appellee herein. (Rec., 19-25.)

In one instance a part of the property covered by one of the state patents was sold under the laws of Wisconsin for taxes and a tax deed was issued and recorded. (Rec., 21.)

No Indian patents in severalty were issued or attempted to be issued to any portion of any Section 16 until 1907, although prior thereto, from time to time, allotments in severalty had been made to Indians on sections other than Sections 16 and patents had been issued therefor. (Stip. Facts XXVII, Rec., 28.)

Cash considerations were paid for the successive conveyances mentioned in the stipulation of facts and the J. S. Stearns Lumber Company paid for the properties in cash. (Rec., 22, 23 and 25.)

All the transactions above recited were made in good faith after careful examinations, including cruises and other investigations and reports by timber experts. Attorneys in the state had passed favorably upon the title, and prior to the purchase thereof by J. S. Stearns Lumber Company it was advised by competent attorneys that the title to the lands was good, and that the state —from which the company claimed, through divers *mesne* conveyances—had acquired good title thereto from the United States. (Stip. Facts, XX, Rec., 25.)

The property was dealt in by the prior individual grantees, claiming under the state patents, as other privately owned property is usually dealt in, as evidenced by instruments of mortgage, warranty deeds, contracts of sale and other usual instruments of conveyance, which were in due course recorded in the office of the recorder of Ashland County, and thus constructive notice thereof was given to the world. (Rec., 19-25.)

Under these circumstances and conditions resting both in fact and law, the defendant, J. S. Stearns Lumber

Company, acquired its title to the properties in question in the years 1900 and 1901.

> "Where questions arise which affect titles to land it is of great importance to the public that when they are once decided they should no longer be considered open. Such decisions become rules of property, and many titles may be injuriously affected by their change. Legislatures may alter or change their laws, without injury, as they affect the future only; but where courts vacillate and overrule their own decisions on a construction of statutes affecting the title to real property, their decisions are retrospective and may affect title purchased on the faith of their stability. Doubtful questions on subjects of this nature, when once decided, should be considered no longer doubtful or subject to change. Parties should not be encouraged to speculate on a change of the law when the administration of it is changed. Courts ought not to be compelled to bear the infliction of repeated arguments by obstinate litigants, challenging the justice of their well-considered and solemn judgments." (*Minnesota Co.* v. *National Co.*, 3 Wall., 332-334.)

The foregoing was said by this court in reference to the case of *Cooper* v. *Roberts*, 18 How., 173, and 20 How., 480 (cited and relied upon in *Beecher* v. *Wetherby, supra.*)

The decision in *Beecher* v. *Wetherby* constitutes a rule of property which has been uniformly relied upon by the State of Wisconsin and the J. S. Stearns Lumber Company and its antecedent grantors. It has been frequently affirmed by this court and adhered to in practice by the Land Department as hereinafter shown. Applying it here, vests in the appellee the fee title to the land, subject only to the usual privileges of the tribal occupancy of the La Pointe band.

VII.

Cases in This Court Subsequent to Beecher v. Wetherby Affirm Its Principles. And Those of Them Which Deny Fee Title to the State Are Distinguishable from the Beecher Case and the Instant Case on Facts Showing the Creation of a Trust, or an Actual, Express Withdrawal for a Governmental Purpose Inconsistent with the School Grant or Some Other Such Actual Disposition, Prior to Survey.

The most important of these cases are:

1. *United States* v. *Thomas*, 151 U. S., 577;
2. *Wisconsin* v. *Hitchcock*, 201 U. S., 202;
3. *Minnesota* v. *Hitchcock*, 185 U. S., 373; and
4. *United States* v. *Morrison*, 240 U. S., 192.

We shall take up these cases in the above order and demonstrate that they sustain the contention made by us, under the rule of *Beecher* v. *Wetherby*, that by virtue of the compact of admission, the state on survey obtained conveyable title to the fee, subject only to the temporary right of Indian occupancy reserved in the treaty of 1842, and continued as to the reservation finally set aside pursuant to the treaty of 1854; and that the existence of that Indian reservation at the date of survey did not affect the state's fee.

1. United States v. Thomas, 151 U. S., 577 (1893).

This case related to a section 16 in Wisconsin claimed to be within the Court Oreilles Reservation, which was agreed to be set apart by the United States in Clause 3, Article 2 of the treaty of 1854 here in question, and as to which, therefore, the same executory discretion of allotment by the President existed as exists in reference to the La Pointe Reservation.

An Indian had murdered a half-breed on this section and was brought to trial in the United States District Court. The jurisdiction of the court was questioned on the ground that the section was a school section. Upon a division of opinion between the Circuit Court and District Judges who heard the case it was certified to this court. No appearance was entered here for the Indian, but the solicitor general appeared for the United States.

This court held the District Court had jurisdiction because (1) the Indian was a ward of the Government independently of any question of title to the section (p. 585); and (2) the section was subject to Indian occupancy and was "within the limits of an Indian reservation" within the meaning of the act of March 3, 1885, relating to crimes committed by or against them, and, therefore, the jurisdiction of the Federal Courts attached (p. 586).

No allotments in severalty had been made on the section, though exactly the same allotment provisions applied to the Court Oreilles Reservation as to the La Pointe Reservation; nor had any other act been done to affect the state's fee title; nor was that fee in fact or law affected by the court's decision on the question of jurisdiction. The claim was, nevertheless, made, for the purpose of defeating criminal jurisdiction under the statute, that the state was actually vested with both the fee *and* the right of possession, and that the land was thus not a part of the reservation or Indian country. It is clear, however, that all the court had to determine and did determine on the question of title was that the *right of Indian occupancy* existed, and that the land was "within the limits of a reservation."

Far from deciding any questions against our proposition, however, it announces exactly what we contend for.

We do not contend that the title of the defendant is now free from Indian rights of hunting and privileges of occupancy. We admit that the title is subject to them, and that is just what this court said in the Thomas case on page 583, to wit:

> "The general rule established by the land department in reference to the school lands in the different states *is that the title to them vests in the several states in which the land is situated, subject to any prior right of occupation by the Indians or others which the government has stipulated to recognize.*"

Then after stating the subject matter of *Beecher* v. *Wetherby*, the court, referring to that case, said on page 384-5:

> "The court held that the fee was in the United States, subject to that right, and could be transferred whenever they chose, but added, 'the grantee would take only the naked fee, and could not disturb the occupancy of the Indians; that occupancy could only be interfered with or determined by the United States.'
>
> We, therefore, are of opinion that by virtue of the treaty of 1842, in the absence of any proof that the Chippewa Indians have surrendered their right of occupancy, the right still remains with them, and that the title and right which the state may claim ultimately to the sixteenth section of every township for the use of schools is subordinate to this right of occupancy of the Indians, which has, so far as the court is informed, never been released to any of their lands, except as it may be inferred from the provisions of the treaty of 1854. That treaty provided for permanent reservations, which included the section in question. The treaty did not operate to defeat the prior right of occupancy to that particular section, but, by including it in the new reservations, made as a condition of the cession of large tracts of land in Wisconsin, *continued it in force.* The State of Wisconsin, therefore, had no such *control* over that section or right to it as would prevent its being set apart by the United States, with the consent of the Indians, as a part of their per-

manent reservation. So, by authority of their original right of occupancy, as well as by the fact that the section is included within the tract set aside as a portion of the permanent reservation in consideration of the cession of lands, *the title never vested in the state, except as subordinate to that right of occupation of the Indians.*"

The statement last italicized means unquestionably that title in the Thomas case under the treaty of 1854, also involved in this case, did vest in the state subordinate to the right of occupation by the Indians.

The Thomas case, therefore, reannounces the controlling principle here, and is exactly in point, because (1) it involved the same treaty and the same compact of admission between the United States and the State of Wisconsin, as are here involved; (2) the Indian reservation for the Court Oreilles, created under clause 3 of Article 2 of the treaty, did not in the judgment of the court operate to dispose of the state's fee though occupancy continued at the date of survey; and (3) *though no allotment in severalty was involved in the case, still the same unexercised discretion in the President to allot, existed as to the Court Oreilles Reservation agreed to be set aside in clause 3 of Article 2, as existed as to the La Pointe Reservation agreed to be set aside in clause 2 of the same Article.*

2. Wisconsin v. Hitchcock, 201 U. S., 202 (1905.)

This case arose on an original bill filed in this court to restrain the Secretary of the Interior from interfering with the State's *use, possession and enjoyment* of Sections 16 in the Flambeau and La Pointe Reservations. The hearing was had on bill and demurrer thereto. It dealt with exactly the same treaties as are involved in the case at bar and in the *Thomas* case. It did not in any way involve the validity of any allotment in severalty on

reservation lands or other interference with the state's fee. The purpose of the bill of the State of Wisconsin was to establish a *complete* title and right of immediate possession in it to Sections 16 in the existing Flambeau and La Pointe reservations, under the treaty of 1854. The distinction between this case and the case at bar will thus be at once evident, our claim being only of the fee, subject to existing Indian occupancy and its incidents until terminated.

The effect of granting the prayer in the Wisconsin case would have been to terminate Indian occupancy and cancel the reservation on the sixteens by judicial order. Courts will not so interfere with treaties and the executive power. The state sought to have itself declared to be "the *absolute owner thereof free from* ANY *claim of said Indians* with the absolute right in and to all the Sections 16 within said territory previously surveyed, as well as to the lands subsequently surveyed by the United States, with the right in the state to have the temporary possession or occupancy of the Indians terminated by the United States." (See page 212.) But the court decided only (p. 215) that the state was not entitled to any order that would interfere "AT THIS TIME *with the administration by the Interior Department* of the lands in question for the benefit of the Indians for whom the Bad River or La Pointe reservation and the Flambeau reservation were established." It did not, however, decide that the President or the Department of the Interior could allot the lands in severalty (as has been done since the decision) so as to defeat the fee title of the state to such lands under the compact. In fact, quite the contrary is to be gathered from the decision. The state actually, as stated above, prayed for an establishment in it of *title free and clear of Indian occupancy,* or as the court more specifically said on pages 214-215, "the state now claims,

as it claimed in that case [*i. e.,* the Thomas case], *absolute title to and full control over the Sections* 16 *named in that act.*" The court denied this claim, and citing the Thomas case and relying upon it principally, and quoting from it fully, held that Wisconsin had no *such* control over Sections 16 or right to them, *as* would *at that time* prevent their being set apart by the United States, with the consent of the Indians, as a part of their reservations (p. 214); saying in the language of the Thomas case:

> "*So,* by authority of their original right of occupancy as well as by the fact that the section is included within the tract set aside as a portion of the permanent reservation in consideration of the cession of lands, the title never vested in the state *except* as subordinate to that right of *occupation* of the Indians." (page 214.)

And again:

> "The general rule established by the Land Department in reference to the school lands in the different states is that the *title* to them *vests in the several states* in which the land is situated *subject to any prior right of occupation by the Indians or others which the government has stipulated to recognize.*" (p. 214.)

The court did not intend to foreclose the issues which are hereby presented. The general treaty right of Indian occupancy still continued. No damage was shown against which the owner of the remainder could complain. No legal right to go upon the land and cut timber, so long as occupancy continued, could be properly asserted as against the Indians. The acts complained of related to interference with the right to possession, a right which the state had not at that time, not to waste or other interference with the fee. The allegations of the bill in this respect were:

> "That beginning about the year 1899, and from thence hitherto, the defendant, Ethan Allen Hitch-

cock, as Secretary of the Interior, and the Commissioner of the Indian Office of the United States, and divers agents and servants under them, have set up on behalf of said *La Pointe* and other bands of Indians, or the members thereof a claim of interest or title in and to section 16 aforesaid in the reservation townships aforesaid, *paramount* and *adverse* to the title of the State of Wisconsin, and have claimed and continue to claim that said sections 16 are still held by the United States in trust for said Indians to the same extent as other lands in said reserved townships, and have forbidden purchasers of such lands holding patents from the state to enter or make improvements or cut any timber thereon, and have thereby cast a cloud upon the title of the state and its grantees to said lands, and have interfered with, and are continuing to interfere with the use and enjoyment of the same by the owners thereof." (p. 207.)

The inevitable conclusion of the court, so long as the treaty right of Indian reservation occupancy continued, in view of the Beecher case, the Thomas case and other prior cases, was, as stated in the concluding paragraph of its opinion (p. 215):

> "Without repeating all that was said in previous decisions, we hold, on the authority of those decisions, that the state is not entitled to the relief asked nor to any order that would interfere, *at this time*, with the *administration* by the Interior Department, of the lands in question for the benefit of the Indians for whom the Bad River or La Pointe Reservation and the Flambeau Reservations were established. Consequently, the bill must be dismissed."

What we ask here is that the appellee's title to the fee to the lands be established subject to occupancy (not that the Indians' occupation, or the administration of the lands by the Department for that purpose, be interfered with); that conveyances already made of that fee to individual Indians in severalty be declared void; and that funds arising from the commercial sale of timber, which

was a part of the fee, but has been severed therefrom, thus terminating the Indian right of occupancy as to the part severed, be decreed to belong to the appellee.

3. MINNESOTA v. HITCHCOCK, 185 U. S., 373 (1901).

This was a bill by the state to enjoin the Secretary of Interior from *selling* Sections 16 and 36 in what prior to the year 1890 was known as Red Lake Indian Reservation in Minnesota, for the benefit of the tribe under a *trust* agreement between the Indians and the United States, made under the Act of Congress in 1889, prior to survey, but after the admission of the state, and in consideration of an original cession of the lands by the Indians to the United States. The act of 1899 was in its general nature like the act of 1871 in the Beecher case, but it was passed *before* survey, whereas in the Beecher case the act of 1871 was passed *after* survey. Below we have set out the facts in chronological order so that the court may clearly see that every event and fact, which the court considered in denying the state's title happened prior to survey and that on survey the land was *disposed of in trust* for the Indians.

1849—Minnesota Territory established providing that upon survey Sections 16 and 36 be reserved for schools in the territory or states erected out of the same. (Opinion, p. 373; 9 Stat., 403.)

February,

1857—Enabling Act for admission of Minnesota containing a proposition in respect to school lands substantially the same as in case of Wisconsin, except Sections 36 are added. (Opinion, p. 375; 11 Stat., 166.)

October,

1857—Constitution formed and school land proposition accepted. (Opinion, p. 376.)

1858—Minnesota admitted (Opinion, pp. 376-377; 11 Stat., 285), and at this time the northwestern part of the state, including the land in question, was and

for a long time afterwards remained *unceded* Indian lands subject to Indian original occupancy.

1863—Treaty *ceding* certain lands within defined boundaries to the United States by Red Lake and Pembina Bands of Chippewa; certain other territory *not ceded* being spoken of as a reservation. This latter territory was thereafter known as the Red Lake Indian reservation. (Opinion, pp. 376-377; 13 Stat., 667.)

1889—Act of Congress providing for a Commission to negotiate with Chippewas of Minnesota for cession and relinquishment of their title and interest to all reservations except White Earth and Red Lake reservations, and to all and so much of these as in the judgment of the Commission was not required to make allotments provided in the act and other existing acts. The act directed that all Indians in Minnesota were to be removed to and allotted lands on the White Earth Reservation, except those on the Red Lake Reservation, who were to remain and be allotted lands to be reserved by the Commission for that purpose on the Red Lake Reservation. The ceded lands were to be surveyed and of them the timber lands were to be sold at public vendue and the agricultural lands to be disposed of to actual settlers at $1.25 per acre. All moneys received from the disposition of the lands were to be paid into the Treasury of the United States and held as a fund for the Minnesota Chippewas for a period of fifty years, and then distributed among them. (Opinion, pp. 376-379.)

1890—Agreement for cession made with the Indians by the Commission and approved by the President, *ceding* all the unallotted lands on the Red Lake reservation for the purpose of sale for Indian benefit under the above act of 1889; the *unceded* portion being reserved "for the purpose of making and filling the allotments." (Opinion, pp. 379 and 395.)

The lands were not surveyed until after 1890 (pp. 379, 390-391), the exact date not being stated in the opinion, or statement of the case, *and they lay within the territory ceded for the purpose of sale.*

The foregoing facts demonstrate that prior to survey, prior to the vesting of any title in the state, while the state's right was a mere promise of land which might still be sold or otherwise disposed of before the state's inchoate right attached, the land was ceded by the Indians to the United States in trust solely for a definite purpose of sale. Title and possession, the entire estate, thus vested and the United States became a trustee prior to survey with a power of *sale* only. It did not, prior to survey, obtain the title in fee in a condition to pass under the school grant. Its power of sale was not discretionary, but mandatory. It could do nothing but *sell* the lands *at auction to purchasers for cash* to be applied for the Indians' benefit in a specific way. This trust, this disposition of the lands within the meaning of the school grant, continued until and after survey. The power to *donate* them to the state for school purposes did not exist in the United States at the time of survey. *Thus it may well be said they never even upon survey became free "public lands" within the meaning of the school section clause of the Minnesota compact with the United States, granting to the state Sections* 16 *and* 36 *in every township of "public lands." No such limitation exists in the case at bar.*

This court said that the Indian title may or may not be entirely extinguished by a cession to the United States depending upon the terms of the treaty. Such a cession might thus be absolute or in trust. But, on the other hand, the court distinctly and emphatically recognizes that upon a cession reserving only the right to occupy, the fee to the property is in the United States subject only to such Indian right, and that "that fee the government might convey, and whenever the Indian right of occupancy was terminated (if such termination was absolute and unconditional) the grantees of the fee would

acquire a perfect and unburdened title and right of possession." (p. 389.)

The court concluded (p. 394 *et seq.*) that upon the facts in the case the cession by the Indians, *made prior to survey, was not in fact a complete cession to the United States of their title* but a *cession of the lands in trust* for the purposes and upon the terms stated; that is to say, the lands were to be divided and sold and the proceeds of the sale were to be deposited in the Treasury of the United States as a permanent fund to the credit of the Indians, and the interest of the fund to be devoted exclusively to the maintenance of free schools among the Indians and otherwise for their benefit.

Then in particular reference to the case of *Beecher against Wetherby,* and showing the complete difference between that case and the Minnesota case, the court said (p. 397):

> "*Beecher* v. *Wetherby,* 95 U. S., 517, 24 L. Ed., 440, is referred to as an illustration of the doctrine and in point in reference to school lands. *But in that case the cession from the Indians was not subject to any trust.*"

After reciting the facts in the Beecher case the court continues (p. 397):

> "The court held that the title of the defendant under the school grant was superior to that of the plaintiff under the sale by the United States. Two facts are apparent: First, the Menominee Indians in the first instance received a cash and real estate consideration for the large reservation which they conveyed to the United States; second, that while thereafter a tract was ceded to them to be held as Indian lands are held,—a tract which included the section in controversy,—and while by an earlier treaty with the Menominees two townships of such tract (including this particular Section 16) had been set apart for the use and benefit of the Stockbridge and Munsee Indians, yet there appears no treaty or agree-

ment with either the Menominee or Stockbridge or Munsee Indians in reference to the sale of these two townships. Yet, as stated by the court, 'when the logs in suit were cut, those tribes had removed from the land in controversy and other sections had been set apart for their occupation.' The ruling was that the United States held the fee, subject only to the Indian right of occupancy; that by the school land section in the enabling act there was a grant, or promise to grant,—in either event to be taken as an appropriation of the fee to the state, subject to the Indian right of occupancy; that the Indians had removed from the lands and had received other lands for their occupation; that hence all Indian rights had ceased. The court, quoting in its opinion from *United States* v. *Cook*, 19 Wall., 591, said (p. 593): 'The right of the Indians to their occupancy is as sacred as that of the United States to the fee, but it is only a right of occupancy. The possession, when abandoned by the Indians, attaches itself to the fee without further grant.'

Hence, applying the doctrine in respect to earlier special and later general statutes, the government having received from the Indians their right of occupancy, without any stipulation or agreement or trust in respect thereto, it was held that the act providing for the sale of the two townships could not have been intended to authorize a sale of specific sections therein which had been already conveyed or promised to the state. *But this case stands on entirely different grounds. Before any survey of the lands, before the state right had attached to any particular sections, the United States made a treaty or agreement with the Indians, by which they accepted a cession of the entire tract under a trust for its disposition in a particular way.*''

If there was no trust under the cession treaties in the Beecher case, there is no trust in the instant case. At the date of survey no rights in the Indians in the case at bar or in the Beecher case existed in the fee as against the state. There was no treaty or agreement with the Chippewas or Menominees in reference to the

sale of their lands. The fee title was subject to no encumbrances or estate, except the terminable rights of occupancy reserved in the respective Indian treaties. The conveyable title to the land was in each case at the time of sectional surveys, in the United States subject only to those Indian rights. The treaties in each case constituted a grant to the United States for a consideration with a reservation of temporary Indian occupancy only. In our case, the United States paid to the Chippewa Indians a cash and real estate consideration and other benefits for the large territory which they conveyed to the United States, aggregating in money some $900,000 under the treaty of 1842 and over $325,000 under the treaty of 1854. In the Beecher case a similar consideration, aggregating $350,000, was paid. No such consideration, the court said, was paid in the Minnesota case, unquestionably because the conveyance was in trust for sale, and the benefit to the Indians was to arise from such sale. Thus the two "apparent" facts in the Beecher case, which the court emphasizes as distinguishing it from the Minnesota case, exist here and may be stated as follows (using almost literally the language of the decision in the Minnesota case): First, the Chippewa Indians received a cash and real estate consideration for each reservation which they conveyed to the United States; second, that while thereafter a tract was ceded to them to be held as Indian lands are held—a tract which included the section in controversy—yet there appears no treaty or agreement with the Chippewas in the present case, or with the Menominees in the Beecher case, in reference to the sale of the lands, such as appears in the Minnesota case.

There is a statement in *Beecher* v. *Wetherby* and repeated in the case of *Minnesota* v. *Hitchcock* that the Munsee and Stockbridge Indians had abandoned the

territory and had ceased to occupy it at the time the logs were cut in 1872 and 1873, and that, therefore, the land was then free from Indian occupation and subject to disposal. It will be noticed that the court does not say that the Indians had removed *at the time of survey.* The fact, as it appears in the opinion and from the treaties there mentioned, is that they were then in occupation of the lands. We shall further discuss this statement in connection with the case of *U. S.* v. *Morrison.* (*Infra,* pp. 50-52.)

We assert, therefore, that far from announcing any different doctrine from the one we contend for, *Minnesota* v. *Hitchcock* announces and reaffirms the same doctrine.

4. UNITED STATES v. MORRISON, 240 U. S., 192 (1916).

In this very recent case no Indian rights, reservations or treaties were involved, but this court held that a forest reservation *established prior to survey* was such a disposition as would prevent the vesting the right of possession of school lands in the State of Oregon, or its grantee, at least so long as the forest reservation continued.

Whether a forest reservation established prior to survey operated to dispose of the fee of the lands so as perpetually to bar the state from taking the lands, or whether such a reservation operated only to postpone possession was not passed on, the court saying (p. 213):

> "We are not called upon to consider any such question here, and we express no opinion upon it, as there has been no extinguishment of the reservation, and from any point of view it must be concluded that no title had passed to the state when it made the conveyance under which the appellees claim."

That question, however, is here for consideration as to the timber severed from the fee and the funds arising therefrom, because the Indian occupancy title therein has been extinguished.

This court in the cases heretofore referred to clearly decided (whatever may be its ultimate decision in respect to a forest reservation), that an Indian reservation does not defeat the vesting of the fee in school lands; that a state may take the fee and await the termination of the reservation; and that upon its termination right of possession unites with the fee, and that this has been the uniform practice of the Land Department.

So, in discussing the Beecher case this court said in the Morrison case (pp. 206-207):

> "The lands had been surveyed in 1854; prior to that time, there had been no other disposition of the fee by the United States; the title had vested in the state subject at most to the Indian occupancy, *and this had terminated.* There was abundant reason for the decision that these lands were not embraced, and were not intended to be embraced, in the provisions for sale made by the act of 1871."

Unquestionably this court had in mind in referring to the termination of Indian occupancy only the effect thereof on the vesting of the right of possession. It could not, with the facts relied upon in the decision of the Beecher case in mind, have meant anything else. Inasmuch as the same expression in reference to Indian removal is used in *Minnesota* v. *Hitchcock* (*ante,* p. 48), and may lead to some confusion, it is well perhaps briefly to restate here the actual fact in the Beecher case so as to establish definitely that the removal of the Indians had nothing whatever to do with the vesting of the fee in the state, but merely marked the point of time when right of possession united with the title in the fee theretofore vested.

In the Beecher case the treaty of 1854 included, as one of the twelve townships constituting the reservation thereby created, township 28 north, range 14 east, in which was located the section 16 involved (95 U. S., 519). This township and one other on the south boundary line of their reservation, the Menominees agreed, should be set apart for the use of the Stockbridges and Munsees. These twelve townships constituted the Menominee reservation, which, by the treaty, were to be held by them "as Indian lands are held" and as "a permanent home." (page 519). The treaty was entered into under date of May, 1854, and the surveys were made in May and June, 1854. Up to the time of the treaty of 1854 the Menominees were in general occupation under prior treaties, and after the treaty of 1854, entered into while the surveys were being made, the lands were occupied as a reservation for the Menominees under that treaty, and "a portion of these lands were by another treaty, ceded to the Stockbridge and Munsee tribes." (p. 527.) This cession was made by treaty with the Menominees Feb. 11, 1856 (11 Stat., 679), and supplemented one with the Stockbridges and Munsees made Feb. 5, 1856. (11 Stat., 663.) Thus the lands were subject to Indian rights of reservation occupancy before, at and after survey. The statement in the Beecher opinion is not that the Indians had removed from the land in controversy at the time of the school grant in 1848, or at the time of the survey in 1854, or at the time of the act of 1871 for the sale of the Munsee and Stockbridge lands, or at the time of the issuance of the patents either by the state or the United States, but that "when the logs in suit were cut (that is, in the winter of 1872 and 1873) those tribes had removed from the land in controversy and other sections had been set apart for their occupation." (p. 527.) The removal to which the court referred must clearly, as above shown,

have been subsequent to the treaties of 1856 above mentioned and hence subsequent also to the survey in 1854 and the vesting, thereupon, of the fee in the state. What was undoubtedly in the mind of the court was that occupancy was terminated and the Indians to be removed under the provision for sale in the act of 1871 under which the United States patents were attempted to be issued to the defendant in 1872. This is the view taken by the Department of the Interior in the *Swamp Grant case* (25 L. D., 17) involving this same Stockbridge and Munsee Reservation, where it was said:

> "The tract involved there [*Beecher* v. *Wetherby*] had been sold under the provisions of the act of 1871, *supra*, WHEREBY all rights therein in the Indians had been terminated." (See, *infra*, p. 56 *et seq.*)

The Morrison case is distinguishable from the instant case on the same principle that this court distinguished it from the Beecher case, where, in direct reference to the latter case, it said (p. 207), "the title had vested [meaning at the time of survey] in the state subject at most to the Indian occupancy." The condition of title at survey in the case at bar and in the Beecher case is the same. In the Morrison case, however, the lands, prior to the time when survey became a completed administrative act, were expressly withdrawn from any disposition inconsistent with the forest reservation, and actually appropriated to that purpose and use. Thus, on survey there was nothing on which the school grant could operate. Whereas, in the case at bar, at survey, the lands were subject only to the Indian privileges of reservation occupancy, the transferable fee being in the United States, undisposed of and thus subject to the self-executing school grant to the state.

There is, however, another fundamental distinction between the facts in the Morrison case and the instant

case. A forest reservation and an Indian reservation, like the La Pointe Reservation, in the treaty of 1854, are essentially different in their nature and legal effect. Such a reservation for Indians is a mere right of user by them as a tribe, limited as stated in *United States* v. *Cook* to a particular kind of use and subject to the prohibitions of the laws in respect to waste and the rules of good husbandry as against the owner of the fee in remainder, whether the owner is the United States, a state or a grantee of that fee from either, and does not prevent the operation of the school grant on the fee. A reservation of land to the United States for forest purposes is necessarily and expressly a complete withdrawal of the land from other disposition. The timber there as a part of the fee is, of course, particularly and exclusively reserved to the use of the United States. So, also, are all other natural resources of the reserved lands in so far as they may not be expressly excepted in the proclamation.

As showing the plenary power of the President in relation to the establishment of forest reserves and the complete withdrawal for that particular governmental purpose of the timber thereon, we refer to the provisions of Section 24 of the Act of March 3, 1891 (26 Stat., 1103), referred to in the Morrison case (page 212). This act provides: "the President of the United States may, from time to time, set apart and reserve, in any state or territory having public land bearing forests, any part of the public lands, wholly or in part covered with timber or undergrowth, *whether of commercial value or not*, as public reservations, and the President shall by public proclamation, declare the establishment of such reservations and the limits thereof." We also refer to certain language of the Act of June 4, 1897 (30 Stat., 34), also mentioned in the Morrison case (page 212), which provides that "no public forest reservation shall be estab-

lished, except to improve and protect the forest within the reservation, or for the purpose of securing favorable conditions of water flows and *to furnish a continuous supply of timber for the use and necessities of the citizens of the United States.*"

When such a use is created prior to survey it of necessity excludes the school grant, especially as to timber, because it results in a complete disposition, reservation and withdrawal by the United States, of the fee and the use and occupancy thereof for purposes completely inconsistent with any right thereto in any other person or body whatsoever, except as may be thereafter expressly permitted by the United States. Such rights as we claim here in fee to protect the timber on the section 16, and prevent its being cut or sold, would of course be inconsistent with such a forest reservation, but not with an Indian reservation where the occupants' rights are limited and where the fee owner's rights are protected, as in *U. S.* v. *Cook, Beecher* v. *Wetherby,* and other adjudicated cases.

The terms of the proclamation of the President and of the withdrawal by the Secretary of the Interior, as they appear in the opinion in the Morrison case, emphasize what has just been said. This proclamation, made *prior to survey,* covered "all lands which at this date are embraced within any withdrawal or reservation for any use or purpose to which this reservation for forest uses is inconsistent." (p. 197.) The withdrawal so confirmed by the proclamation withheld and reserved "for forestry purposes *from all forms of disposition whatsoever,* except under the mineral laws of the United States, all the vacant and unappropriated lands" (p. 197) within certain prescribed areas, which included the sixteens there in question. That school grant lands were included within the prohibited forms of disposition, is made doubly

clear because of the exception of the mineral lands. The express inclusion of this one form of permitted disposition of lands within the reservation is the clear exclusion of all others.

There is no such complete, inclusive and exclusive reservation in the treaties involved in this case. Even the allotment provisions of the treaty of 1854 under Article 3 do not *ipso facto* reserve or withdraw the reservation lands. They amount (as will be more fully shown later herein) to no more than a discretion or option to the President to allot, and not to a disposition or withdrawal of the fee, until the exercise of such option or discretion; and in the present instance, it was not attempted to be exercised until from thirty to forty years after the surveys. On the other hand, the forest proclamation and withdrawal, *ipso facto,* withdrew the lands instantly "from all forms of disposition whatsoever," with one exception which did not include school grants.

VIII.

Decisions of the Land Department Have Consistently Followed Beecher v. Wetherby, Holding That Where School Lands Are in Indian Occupancy, There, on Survey, the State (Unless It Selects Indemnity Lands) Takes the Fee, and at Once Upon Extinguishment of Occupancy the Fee and Right of Possession Unite.

The question of construction in this case is one which has been passed upon in many cases before the Land Department and there can be no doubt that the Land Department has consistently followed *Beecher* v. *Wetherby, supra,* and other cases which we have cited. As heretofore shown it was adopted in 1880 by the Land and Indian Departments (see Appendix) and stated di-

rectly to the Wisconsin State Land Department in response to the latter's request for information in respect to the title of the state to two of the school sections here involved.

In re Swamp Grant (25 L. D., 17), it was held that the fee to swamp lands in Wisconsin, embraced within the Stockbridge and Munsee Indian Reservation under occupancy at the time of the swamp land grant of 1850, passed to the state, subject to occupancy, but the right of possession remained in abeyance until such time as the Indian right of occupancy should be surrendered or otherwise ended by the United States. The Beecher case involved the same reservation. It was said in this decision of the Land Department:

> "It was held in State of Michigan (8 L. D., 308), that lands of the character granted, but covered at the date of the swamp land grant by a temporary reservation, passed under said grant subject only to the use contemplated by the reservation. In *Callanan et al.* v. *Chicago, Milwaukee and St. Paul Railway Company* (10 L. D., 285) it was held that the fee of swamp lands occupied by the Indians at the date of the grant passed thereunder, and that the right of possession attached itself to the fee at once upon the extinguishment of the Indian right of occupancy. In both these cases reference was made to the case of *Beecher* v. *Wetherby* (95 U. S., 517), which arose under the grant of lands for school purposes, and it was said that the swamp land grant should receive the same construction upon this point as was there given to the school grant.
>
> The land involved in *Beecher* v. *Wetherby* was Section 16 in the same township in which the lands here in question are situated. It was there held that the land passed to the State subject to the right of Indian occupancy, it being said:
>
> 'The grantee, it is true, would take only the naked fee, and could not disturb the occupancy of the Indians; that occupancy could only be interfered with or determined by the United States.' * * *

In re State of Wisconsin (19 L. D., 518) a question arose as to whether selections of the State under the swamp land grant of tracts in the occupancy of the Indians should be approved. This involved the treaties with the Chippewa Indians of 1842 and 1854 mentioned by the Supreme Court in *United States* v. *Thomas, supra,* and the Department, after again ascertaining that the school grant and the swamp land grant are similar in character so far as the passing of title is concerned, and that the same reasoning applies in cases under the former as under the latter grant, and referring specifically to *United States* v. *Thomas,* used the following language:

'It is therefore directly in point and is authority for saying that by the grant of 1850 the State of Wisconsin acquired the title to the swamp lands in the Lac de Flambeau reservation, subject to the right of Indian occupation, the mere naked fee, without the right to occupy until the Indian right shall have been extinguished.'"

Perhaps the clearest affirmance of our contention in regard to the fundamental principle decided in *Beecher* v. *Wetherby* is to be found in *State of Washington* v. *Geisler,* 41 L. D., 621, 625 (decided in 1913), as follows:

"It appears from the statement of facts in *Beecher* v. *Wetherby,* though not affirmatively from the decision itself, that the lands there in controversy had been surveyed in the field as early as June, 1854. The grants of school lands to the State had been made August 6, 1846, and by joint resolution of the Legislature of Wisconsin, February 1, 1853, the State had assented that the Menominee Indians should be permitted to remain on a tract of land in said State, therein described. The section 16 there in controversy was part of such tract and confirmed to this tribe of Indians by treaty between it and the United States, May 12, 1854. By an act of Congress, February 6, 1871 (16 Stat., 404), which was long after the lands had been surveyed, the lands so set apart for these Indians were directed to be sold for their benefit, and including this section were sold under the direction of the Secretary of the Interior and patents of the United States issued pur-

suant thereto. The patents so issuing upon the sale of section 16 were the patents declared void by the court. *These pertinent and controlling facts considered, it is clear that the court's ruling rests upon the principle repeatedly declared by both the land department and the courts that the grant to the State had attached upon identification of the land by survey, subject only to the Indian right of occupancy, and that upon the extinguishment of the right the State's title was complete; that having the legal title, it then came into the right of possession. This analysis of the decision brings it in harmony with other decisions of the Supreme Court of the United States upon this question.* See *Sherman* v. *Buick* (93 U. S., 209); *Heydenfeldt* v. *Daney Gold and Silver Mining Co.* (Id., 634); *Minnesota* v. *Hitchcock* (185 U. S., 373."

See also:

In re Colorado, 6 L. D., 412;
In re Michigan Swamp Land Grant, 8 L. D., 308;
Callanan v. *C. M. & St. P. R. R. Co.,* 10 L. D., 285;
In re Sherry, 12 L. D., 176.
In re Nebraska School Grant, 18 L. D., 124.

This court has said:

"It is our duty not to overrule the construction of a statute upon which the Land Department has uniformly proceeded, in its administration of public lands, except for cogent reasons." (*McMichael* v. *Murphy,* 197 U. S., 304; *California* v. *Desert Water, Oil and Irrigation Co., decided March* 26, 1917.)

The clear conclusion to be deduced from the decisions above quoted and referred to is that the State of Wisconsin took the fee to the land in the sixteens at the date of the survey, but that its right to possession was held in abeyance until such time as the Indian right of occupancy as to the whole or as to any part should be surrendered by them or otherwise ended by the United States. As to the timber severed this occupancy has been so terminated in the case at bar.

IX.

Omission by the State to Select Lieu Lands on Survey Does Not Constitute a Waiver of Its Title in Fee Subject to Occupancy.

The State of Wisconsin was not obliged to select indemnity lands immediately on survey; and by not having made such selection it has not waived its fee title. It could, as it did, accept from the United States the conveyable fee burdened with occupancy in the Indians who are bound, like any life tenant, to observe the rules of good husbandry, and it could await the termination of the occupancy, in whole or in part. The cases above reviewed sustain this view. The acts of Wisconsin in issuing the patents to school lands in this case are evidence of its election to take the burdened fee, and that it did not consider it had waived its rights, or that there was any necessity to select lieu lands.

The United States statutes, providing for indemnity lands where Sections 16 or 36 are lacking or fractional in any township, were amended in 1891 so as to cover land which, *prior to survey,* had been pre-empted or homesteaded or subject to a military or Indian reservation or were mineral lands. (26 Stat., 796.) This act has this significant proviso, however:

> "That nothing herein contained shall prevent any state or territory from awaiting the extinguishment of any such military, Indian, or other reservation and the restoration of the lands therein embraced to the public domain and then taking the Sections sixteen and thirty-six in place therein; but nothing in this proviso shall be construed as conferring any right not now existing."

The right of the State of Wisconsin and its grantees to the fee was an existing right at and prior to 1891, and

thus within the act; so that since the lands are subject only to the reservation occupancy, and since there was, as we believe has been, and will be further demonstrated, no trust or withdrawal or other disposition of the fee prior to survey, the fee title vested in the state and in the appellee as the ultimate grantee of the state. It may await the termination of the reservation and, in the meantime, protect its vested fee from waste or other infringement. If at any time Indian possession is terminated as to any part of the lands, as in case of timber heretofore or hereafter cut, for commercial use off the premises, it is entitled thereto and to the proceeds of any sale thereof.

We also call attention to the principles stated and cases cited under the following division of this brief.

X.

The Words "Public Lands," as Used in the School Grants, May Include Lands in Indian Occupancy and Are Not Limited to Such Lands Only as Are Subject to Sale or Other Disposal Under General Law.

The school grant section of the Wisconsin compact was in the usual form and defined the sections granted as "sections numbered 16 in every township of the *public lands* in said state."

It has been insisted that the school grant can legally operate only on *the public lands*, and that the words "public lands" are habitually used to describe such lands only as are subject to sale *or other* disposal under general law (*Newhall* v. *Sanger*, 92 U. S., 761-763, *Minnesota* v. *Hitchcock*, *supra*); and that lands burdened by Indian occupancy are not *free public lands* on which the school grant could operate. But this definition does not apply to the claim made here under the school grant.

It is admitted that the school grant could not operate upon such lands so as to oust the Indians from their occupancy. Our claim is of the fee subject to that occupancy. At survey that fee title in remainder was in the United States, free, clear and conveyable, even though Indian occupancy continued. (*Johnson* v. *McIntosh*, 8 Wheat., 543; *Buttz* v. *N. P. R. Co.*, 119 U. S., 55; *Beecher* v. *Wetherby, supra; Minnesota* v. *Hitchcock, supra.*) The Indians had no right or title in the remainder in fee (*United States* v. *Cook, supra*), title to which was promised to the state in its compact of admission, unless the lands appeared to have been sold or otherwise disposed of when identified by survey. Yet such lands were not *free* public lands subject to sale or other disposition under general law.

The contention that the lands in controversy never became public lands, and so never became subject to the state school land grant, is based largely upon the construction which this court has placed upon grants to or for railroads. As to railroad and similar grants, in aid of purposes largely private, it is held, under the particular language of such grants, often in terms excepting Indian and other reservations, and pre-emption and homestead claims, that if, at the time when the grant is made, and in some cases when the railroad is definitely located, any part of the land is encumbered by a settlement under the homestead or pre-emption laws, or reserved for any public use, the grant does not attach to such lands, even though the right of the homestead settler, or other claimant, is thereafter forfeited or abandoned or the public use discontinued.

It is with reference to these particular grants and this condition of circumstances that the terms "public lands" and "public domain" are employed by the court. Such grants are construed to be grants *in prae-*

senti, only to attach to such public lands as are absolutely free from claim, and to which the title and right to possession may pass at once to the railroad company. (*Pacific Ry. Co.* v. *Dunmeyer,* 113 U. S., 629, 634, and *Whitney* v. *Taylor,* 158 U. S., 85, 89.) Directly to the contrary is the rule as to school land grants, in respect to the lands upon which they operate. "The interests of the public schools have always been considered paramount to those of railroad companies in grants made to aid their construction. The one speaks for intellectual; the other for material development." (*Minnesota* v. *Hitchcock, supra,* p. 401.) As to them the rule is, as shown by the decisions of this court and the land department, that the title passes to the state on survey subject to any prior existing right of occupancy by the Indians, or others, which the Government had stipulated to recognize. If at the time of the survey the land is upon an Indian reservation or unceded country, the state takes the fee subject to this encumbrance, and may await the extinguishment of the Indian's title or right; or, if any part of the land is covered by a pre-emption or homestead claim, it is not thereby excepted from the school land grant, but the state may await the extinguishment or abandonment of the encumbrance, and as to a settler, unless he completes and perfects his title, the state's right will attach. (*Water Mining Co.* v. *Bugbey,* 96 U. S., 165.) In other words, the rights of all such claimants in possession do not create exceptions from the school grants, as they do from the other grants, like railroad grants (*Whitney* v. *Taylor,* 158 U. S., 85-89), but are encumbrances upon the fee; that is to say they may burden the title to the land subject to the school grant, but they do not prevent its application to the land and its vesting in the state such right or title as exists in United States on survey, with the possibility of uniting

with that right or title such further right or title as may accrue on termination of the incumbrance.

The following decisions establish the above stated rule that in the case of school grants states are not bound to make lieu land selections, where the lands are subject to pre-emption or homestead claims, but may await the subsequent action of the settler and if he fails to perfect or abandon his claim the state's right immediately attaches, as of the date of survey, and no right initiated after survey, or assignment after survey of a right initiated before but not completed, can intervene as against the state:

In re Watson, 6 L. D., 71;
In re Lowe, 1 L. D., 630;
Meete v. *California*, 1 Copp., 632;
Larson v. *Perchierer*, 1 L. D., 401, 403;
In re Miner, 9 L. D., 408;
In re Talbot, 8 L. D., 495;
Gonzales v. *Flagstaff*, 10 L. D., 348;
Revenaught v. *Washington*, 13 L. D., 434.

These decisions are evidence of the uniform practice of the Department to regard the state as the owner of whatever title remained in the United States at the date of survey (whether or not the lands were free public lands subject to disposition under general law), and show the historical foundation of the principles of the act of 1891 in regard to state lieu lands with its apt proviso allowing states, instead of taking lieu lands, to take title in fee, to await the termination of encumbrances on its title and then take into possession the specifically granted sections.

XI.

By the Provisions for Allotment of Lands in Severalty Under Article 3 of the Treaty of 1854 No Right in or Trust for the Indians Individually or as a Tribe Was Created so as to Dispose of the Ultimate Fee and Prevent the School Grant from Attaching Thereto on Survey Subject to the Right of Indian Occupancy.

In the first place it will be noticed by reference to Article 3 of the treaty appearing *supra*, page 21 of this brief, that Indians are given no rights whatever to select lands. Any allotment to them depended entirely upon a discretion of the President exercisable only after he had caused the whole reservation to be surveyed. The words defining this discretion are all permissive, "he may from time to time at his discretion assign to each head of a family," etc. They created no right in the Indians under the treaty to demand and receive lands in severalty and were not attempted to be exercised as to Sections 16 until 1907.

It will be remembered, too, that the class among which the President was permitted to assign was completely indefinite. This class was defined as "each head of a family or single person over twenty-one years of age," and assignments were permitted "from time to time," and the right to patent arose only as "occupants become capable of transacting their own affairs." The amount of land was stated to be 80 acres per capita, but until assigned by the President it was without definite location.

Thus from the provisions of this article, three things are clear: First: Neither the tribe nor an individual had a right to demand an allotment; Second: The possible allotees were indefinite; Third: The subject-matter of allotment was indefinite.

It is axiomatic that there cannot be a grant without a definite subject and object; nor can there be an effective right without the power to enforce it.

The difference between the provisions creating the trust for sale of the lands in the case of *Minnesota* v. *Hitchcock, supra,* and the provisions for allotment in Article 3 of the treaty of 1854 here in question is very clear, with the following facts in mind: *First.* The act and agreement of 1889 and 1890 (25 Stat., 642), in the Minnesota case, passed and entered into prior to survey in consideration of the cession of their lands to the United States, were mandatory throughout and created an enforceable tribal right by *directing* that the lands *shall be sold* at vendue; that the money *shall* be deposited in the Treasury as a permanent fund, and *shall* draw interest, which interest and permanent fund *shall* be expended solely for the Indians' benefit; *Second.* The territory to be sold was definite and consisted of all the unalloted lands on the reservation (185 U. S., 373-395); and *Third.* The Indian beneficiaries were definite. At the time of the agreement, prior to survey in the Minnesota case, both the territory and the Indian beneficiaries were ascertained by a Commission appointed for that purpose, so that when survey was finally made after 1890, the specific lands to be sold were disposed of in trust for the tribe, *i. e.,* the specific lands to which the state's float would have attached were in fact otherwise disposed of, by being at the time of survey burdened with a trust, enforceable in equity, for the benefit of a definite group of Indians, to wit: the tribe.

In the present case, however, nothing was made mandatory or enforceable by an Indian. The President's power was a mere discretion creating no such vested legal or equitable interest or title in the tribe or individual Indian as could be held to create a trust or a vested right. (*U. S.*

v. *Rowell,* 243 U. S., 464.) Until action by the President the subject matter of a possible allotment was unknown, the identity of the grantee was unknown and the Indians' right had no existence in fact. If other rights *in fieri,* like the state's right to a section sixteen, attached prior to the time when a right of any Indian attached, the Indian right, being later, would, of course, be subordinate thereto. Therefore, since the state's right in the fee did attach on survey in 1864 and 1873, prior to the vesting of any Indians' right in severalty (which came into existence, if at all, by executive assignment and patent in 1907), it is clearly prior in time and in law. In the Minnesota case, however, the trust for Indians' benefit attached to defined lands, as a tribal right in an existing tribal entity or group of ascertained individuals, prior in time, and thus was prior in law, to the state right.

The allotment provisions of Article 3, under which the patents in the case at bar were issued, are limited to full-bloods and to reservation lands, and differ radically from the provisions of clause 7th of Article 2, which is limited to half-breeds *and to ceded lands outside the reservation.* (See *ante,* p. 19-20.) In the case of the half-breeds the members of the class were definite at the date of the treaty. A *right* to select is created in them, and the President is clearly bound to patent the selection. The language there used is: "Each head of a family or person over twenty-one years of age *at the present time* of the mixed blood * * * *shall be entitled* to eighty acres of land to be *selected by them,* under the direction of the President, and which *shall be secured to them* by patent in the usual form." There is no option or discretion here, though selection is to be made under the President's supervision. All is definite.

The significance of these differences is that they evidence a clear intention not to create in favor of the Indians (evidently meaning those of the full-blood) *any right* on reservation lands beyond the mere right of occupancy; and to deal with the full-bloods and with reservation lands on an entirely different footing from the half-bloods and the *free ceded lands outside the reservations.*

The further difference should be borne in mind between the general indefinite provisions for allotment to any Indians and such provision as those in clause 6th of Article 2 of the treaty of 1854, giving directly to Chief Buffalo, a definite person, by name, without the intervening consent and not subject to any executive or other discretion, a positive right of selecting "one section of land, at such place in the ceded territory as *he* may see fit, which *shall be reserved for that purpose and conveyed by the United States* to such person or persons as he may direct." Such a grant as this has been uniformly held to be a direct, alienable right of selection created by the treaty itself. (*Prentice* cases, heretofore referred to, *Francis* v. *Francis,* 203 U. S., 233; *Jones* v. *Meehan,* 175 U. S., 1, and review of authorities there given). Such a grant to a named Indian, if selected by him on a Section 16 prior to survey would probably have been such a disposition as to defeat the school grant.

But the indefinite allotment provisions of Article 3 are clearly of a different nature. They by themselves no more create a trust for or vested right in the La Pointe and other bands of Indians or individuals of them than the provisions of the General Allotment Act of 1887 (24 Stat., 388, 389), by its terms alone, creates a trust for or vested right in all Indians or for individuals. Location of specific land, selection by a definite Indian and a "trust patent" by the United States are all necessary prerequi-

sites to the trust relation. (*U. S.* v. *Rickert,* 188 U. S., 432, 435.) Similarly, in the case of a citizen with the opportunity of homestead or pre-emption or desert or other entry under *general* law, "prior to the initiation of some right given by law the citizen had no interest in the public statute and no private right in the land which was the property of the people." (*U. S.* v. *Midwest Oil Co.,* 236 U. S., 459.) Similarly, also, a holder of a New Madrid certificate, after location in the limited territory of Missouri, obtained no vested right to land under the *special* act of Congress until he had fully complied with the steps prescribed in the act of 1815 for the relief of the particular class of persons known as New Madrid sufferers. (Hot Springs cases, 92 U. S., 698.)

In the Oregon Donation Act the words of grant were not executory and dependent on executive discretion as they are in our case, but were present and positive. The class of grantees was more definitely stated to be white persons, American half breeds included, "now residing in the territory (Oregon) who shall have resided on and cultivated the same for four consecutive years." Yet this court held that the rights of a person, who deceased during the four year period, were merely those of possession and occupancy, not a vested title, and hence his heirs could take nothing, and other rights might attach, saying:

> "There cannot be a grant unless there is a grantee consequently there cannot be a present grant unless there is a present grantee. * * * The grant was not to a settler only but to a settler who had completed the four years of residence &c. and had otherwise complied with the act. * * * But until he was qualified to take, there was no actual grant of the soil." (*Hall* v. *Russell,* 101 U. S., 503, 1879.)

These acts themselves create nothing but an oppor-

tunity—not a disposition of the land within the meaning of the school grant. Even where under such acts, right to land have been initiated, there is still no such disposition as will defeat the school grant. The inchoate right must have become choate and developed into title. (*Water & Mining Co.* v. *Bugbey*, 96 U. S., 165, and Land Department Decisions, *ante*, p. 63.)

That there was no trust for or vested right in the tribe or the individuals under the Chippewa treaty of 1854 is clear and the following cases are instructive on this question.

In *Fleming* v. *McCurtain*, 215 U. S., 56 (1909), it was held that the treaty of 1830 with the Choctaws whereby the United States "conveyed to the Choctaw nation a tract of country west of the Mississippi River, *in fee simple*, to them and their descendants, to inure to them while they shall exist as a nation and live on it," did not create a trust for the individuals comprising the nation and their descendants so as to vest in them, on the dissolution of the nation, as tenants in common the whole legal and equitable title to the lands. Here and in the next three cases, though tribal rights were created, no interest in severalty arose.

In *Conley* v. *Ballinger*, 216 U. S., 84 (1909), a bill was filed by an individual Indian to enjoin the United States from selling lands "permanently" reserved in a treaty with the Wyandottes, as an Indian cemetery. It had been excepted from a cession by the tribe to the United States. The Indian plaintiff's sister was buried there and the suit was brought to protect her grave. This court held that there was no enforceable trust as against the United States, either for the tribe or for the individual.

In *Sac and Fox Indian Cases*, 220 U. S., 481 (1910),

certain annuities arising on account of ceded lands were payable under an act of 1852 (10 Stat., 41, 56) "directly to the Indians themselves or to the tribe per capita," and this court held that the Act of 1852 gave no vested rights to individuals; that *it was not a grant to the Indians but a direction to agents of the United States, subject to other directions from the President; that the government did not deal with individuals but with tribes;* and that the promises in the treaties under which the annuities were due were promises to the tribes.

In *Blackfeather* v. *U. S.*, 190 U. S., 368 (1902), the action was brought by a Chief of the Shawnees on account of the band or tribe, to recover $530,000 for the taking of certain stock and property, claimed to be owned by Indians, by soldiers during the Civil War. In a treaty of 1854, under which the claim was made, the Shawnees acknowledged their dependence and agreed to abstain from depredations and the recital was made "they will expect to be protected and have their rights vindicated." The court held, however, that the United States dealt with the nation, not with the individuals.

See, also, the late case of *Williams* v. *Chicago,* 242 U. S., 434.

XII.

By the Provisions in Article 3 of the Treaty of 1854 for Discretionary Allotment by the President the Fee of the Lands Was Not Withdrawn or Reserved for a Governmental Purpose so as to Defeat the Operation of the School Grant on Survey. Vested Rights as They Appeared on Survey Were Reserved.

It is urged that admitting that as against a school grant the creation of an Indian reservation does not dispose of the ultimate fee, but merely subordinates it to

terminable occupancy; and admitting that provisions for allotments in severalty do not create a trust for or a right in the tribe or individuals, and, hence, do not defeat the operation of a school grant—nevertheless, the provisions confiding to the executive department the privilege in its discretion, from time to time to make allotments in severalty, operate to withdraw from other disposition, or reserve to the United States, the reservation lands for a governmental Indian purpose.

It was stated in *Minnesota* v. *Hitchcock,* 185 U. S., 373-402, in discussing the relative governmental policies in respect to schools and to Indians:

> "Instead of removing these Chippewa Indians from Minnesota, the purpose of the legislation and agreement was to fit them for citizenship by allotting them lands in severalty and providing them a system of public schools. Surely it could not have been understood by the Indians that only a part of the lands they ceded were to be used for these purposes. They were dealing with the tract as an entirety, and they had a right to expect that the entire tract would be used as declared in the act and agreement. No provision is made for compensating the Indians for lands which would be lost if the right of the state was sustained, whereas, on the other hand, the right of the state to compensation for the particular school sections within the tract had already been secured. Contrasting the two policies—that in respect to public schools and that in respect to the care of the Indians—it would seem that we are called upon to uphold the rights of the Indians, which otherwise would be wholly lost without compensation as against the claims of the state for which satisfaction in other directions has been provided."

Was there any such purpose in the treaty of 1854, by which the Government or the Indians understood that not all reservation lands were to be used for the purpose of allotment?

Under our contention that we are entitled to the fee

only, subject to occupancy (except where such occupancy has been terminated, as in the case of severed timber), the "rights of the Indians" are not, to "be wholly lost without compensation," as in the Minnesota case. Here we admit these rights of Indians to the full extent of their occupancy. In the Minnesota case the state denied them completely, even under circumstances where the lands had been by a trust for Indian benefit, absolutely and perpetually disposed of to the exclusion of the school grant prior to survey.

This court has frequently said that Indian treaties should never be construed to their prejudice, that how the words were understood by this unlettered people, rather than their critical meaning should form the rule of construction. (*Worcester* v. *Georgia*, 6 Pet., 515; *U. S.* v. *Kagama*, 118 U. S., 375; *Choctaw Nation* v. *U. S.*, 119 U. S., 1; *Jones* v. *Meehan*, 175 U. S., 1.)

> "But (as said in *U. S.* v. *Choctaw Nation*, 179 U. S., 494, after citing the above rules of construction and cases) in no case has it been adjudicated that the courts could, by mere interpretation or in deference to its views as to what was right under all circumstances, incorporate into an Indian treaty something that was inconsistent with the clear import of its words. It has never been held that the obvious, palpable meaning of the words of an Indian treaty may be disregarded, because in the opinion of the court, that meaning may in a particular transaction work what it would regard as an injustice to the Indians. (p. 532.) * * * If the words used in the treaty of 1866, *reasonably* interpreted, import beyond question an absolute unconditional cession of the lands in question to the United States free from any trust, then the court cannot amend the treaty or refuse to carry out the intent of the parties, as gathered from the words used, merely because one party to it held the relation of an inferior and was politically dependent upon the other, or because in the judgment of the court the Indians may have been overreached. To hold otherwise would be practically to recognize

> an authority in the courts not only to reform or correct treaties, but to determine questions of mere policy in the treatment of the Indians which it is the function alone of the legislative branch of the Government to determine." (p. 535.)

We believe that an examination of the treaty of 1854, under the principles of construction above stated, and with the circumstances under which that treaty was made in mind, demonstrates that there was no purpose of the Government, by the allotment provisions, to reserve or withdraw from the operation of the school grant for allotment purposes, the fee to the school sections.

In this case no actual disposition in severalty of school grant lands was made prior to survey and by express provisions of the treaty of 1854, *vested rights, as they were found to exist on survey, were to be protected.*

The treaty on its face and the circumstances under which it was made, clearly show that the Government in making it considered and sought to deal not with a single governmental policy relating to Indians. This treaty was incident to the far broader policy than just the care of the Indians. It was made at a time (1854) when the western country was filling with whites and the Indians of the territory east of the Mississippi were being *removed* west of that river. Wisconsin and Michigan, the last of the Northwest Territory to become states of the Union, had been admitted as states only a few years and were fast becoming wholly white country. Railroads were being projected and built to meet the demands of commerce in the territory gradually opening up to agriculture, and to the timber and mineral industries. At about this time, pursuant to the government's clear policy, numerous Indian treaties were entered into in respect to the territory of these states. Settlers had located even in the northern part thereof, and had initiated rights of entry for home-

stead and pre-emption thereon; missionaries and teachers had taken residence on lands under Indian occupancy; others had obtained rights and claims equitably cognizable under well-defined legislative policies of the United States, which it was its duty to protect; and the Government had declared its school grant policy with reference to Wisconsin. In the treaty itself the Indians agreed that these purposes, rights and claims should be recognized, particularly and expressly in connection with the provisions in respect to allotments in severalty.

In the acts of 1889 and 1890 involved in *Minnesota* v. *Hitchcock*, there was a reservation, not so general as the one in the case at bar, but reserving rights under bona fide pre-emption or homestead claims. There was no issue upon this clause in the Minnesota case; but in *U. S.* v. *Mille Lac Chippewas*, 229 U. S., 498 (1912), a dispute arose as to whether moneys received from lands within the Mille Lac reservation, subject to homestead and pre-emption claims, belonged to the Indian trust fund arising from the sale under the act and agreement of 1889 and 1890, or to the United States free from the trust. Reversing the Court of Claims this court held, that lands subject to pre-emption and homestead claims were excepted from the trust and the Indians had no claim to the funds, saying, p. 507:

> "True, it is said on behalf of the Indians that they did not understand the act, that is, did not understand that existing entries could be thus carried to patent. But of this it is enough to observe that the language of the proviso to paragraph 6 is plain and unambiguous; that the agreement recites that the Mille Lacs 'do hereby accept and consent to and ratify said act, and each and all of the provisions thereof'; and that the Indians no less than the United States, are bound by the plain import of the language of the act and agreement. Not only so but the act conferred upon the Mille Lacs many very substantial advantages which doubtless constituted the

inducement to the adjustment and composition to which they assented."

The treaty of 1854 in our case was an "adjustment and composition" and contained "many very substantial advantages" as inducements to the Indians, among which were the permission to remain upon reservations in Wisconsin instead of being removed beyond the Mississippi, and payments in money and benefits of upwards of $325,000, in addition to the similar payments aggregating over $900,000 under the treaty of 1842. In making this compromise the parties thereto considered its effect upon the rights of others and many of these rights were clearly not discoverable until their *locus in quo* was established by survey.

Thus in view of the circumstances under which the Chippewa treaty of 1854 was made and the purpose it was intended to accomplish, it is natural that we should find, and in fact we do find, express provisions protecting such vested rights as were discovered to exist when the reservation lands were identified by survey. And *survey* marked the point, it has been demonstrated, where the school grant *in rem* attached *in re,* and became so *vested* in the state that it could not be lawfully interfered with or infringed.

A glance at the terms of Article 2 of the treaty wherein the United States "agrees to set apart and withhold from sale for the *use* of the Chippewas of Lake Superior" the more or less indefinitely described reservations, leaves no doubt that a survey was necessary to their definite establishment in all but two of the six instances. Thus in clause 1st, the Anse and Vieux Desert reservation, was to consist of "*all the unsold* lands in the following townships in the State of Michigan" (describing them in terms of rectangular survey); in clause 2nd, the La Pointe Band reservation was to consist of "a tract

of land bounded as follows" (describing the out boundaries partly by natural landmarks, but principally by township corners and other lines of rectangular survey, unknown until determined by survey); in clause 3rd, two reservations were to be established, one to consist of "a tract of land lying about the Lac de Flambeau, and another on Lac Court Oreilles, each equal in extent to three townships, the boundaries of which shall be hereafter agreed upon or fixed under the direction of the President"; in clauses 4th and 5th, the Fond du Lac and Grand Portage reservations were to consist in each instance of "a tract of land bounded as follows" (describing each by natural boundaries without the use of rectangular surveying terms and in language comprehensible by any Indian); and in clause 6th, the reservation of the Ontonagan Band and the band of which Buffalo was the chief, were to be selected under the direcfion of the President and to consist of "four sections of land * * * the boundaries of which shall be defined hereafter."

Only two of the reservations (those in clauses 4th and 5th) so *agreed* to be set aside and withheld were described by lines which an Indian could have understood and traced at the time of the treaty; and all the boundary lines of the La Pointe Reservation were not fixed by survey until 1873. Undoubtedly, the several bands of Indians recognized the indefinite locality of each reservation mentioned in Article 2 as the general region where each band had theretofore been accustomed to hunt and fish, but the final, accurate definition and location of these reservations were by the treaty left to the President upon surveys by the Land Department.

Therefore, as would be expected, the very next article of the treaty (Article 3) by its first words provides for such surveys in these terms:

"The United States will define the boundaries of these reserved tracts, whenever it may be necessary, *by actual survey, and the President may, from time to time, at his discretion, cause the whole to be surveyed.*"

Having thus provided that the United States will define the boundaries of the reserved tracts by actual survey and from time to time cause the whole to be surveyed, that is to say, *when and after such surveys have been made*, then the clause above quoted continues, the President "*may* assign to each head of a family or single person over twenty-one years of age, eighty acres of land for his or their separate use, and he *may at his discretion*, as fast as the occupants ['occupants' meaning those Indians to whom such assignments have from time to time been made, not mere occupiers without executive assignment] become capable of transacting their own affairs, issue patents therefor to such occupants, with such restrictions of the power of alienation as he *may* see fit to impose."

The power of the President to allot, therefore, was a discretionary right, exercisable over a large territory, *and only after survey.* It was not a promise to or vested right of the Indians. The school grant was, however, a governmental promise to the state that title to specific sections should vest on survey unless actually disposed of prior thereto, and no patent or other executive act was necessary to its vesting. The act of Congress itself, on acceptance by the state, constituted this grant self-executing and effective on survey. (*Gaines* v. *Nicholson, supra.*)

The due and just exercise of this discretionary, executory power by the President demanded that it be exercised subject to vested rights as they became evident on survey. Hence, in this same paragraph of Article 3, in direct association with the allotment provisions, we

find that the President is given power to "make such changes in the boundaries of such reserved tracts, *or otherwise,* as shall be necessary *to prevent interference with any vested rights.*" And in Article 10, we further find the provision that "all missionaries, and teachers, and *other persons of full age, residing in the territory hereby ceded or upon any of the reservations hereby made by authority of law, shall be allowed to enter the land occupied by them at the minimum price* WHENEVER THE SURVEYS SHALL BE COMPLETED *to the amount of one-quarter section each.*" Again, in Article 3 we find the provision that the President "may also assign [to the Indians in severalty] other lands in exchange for mineral lands, if any are found in the tracts herein set apart," clearly indicating that no Indian assignee of land or the band had any discretion in the matter or any right absolutely to hold the reservation intact or to keep land once assigned; for if it were mineral land, it could be taken away at any time, and other lands assigned in exchange.

There can be no question, therefore, from the language of the treaty "reasonably interpreted," that the parties to the treaty, both the Indians and the United States, understood: (1) the larger policy of protecting white settlement, advancement of industry, culture and education (including establishment of state schools) has direct expression and protection in the treaty itself and was agreed to by the Indians; and (2) not all reservation lands were to be used for the purpose of allotment, but other rights in the land were to be preserved even though thereby lands were lost to the Indians.

The language of the clause reserving "vested rights" is "*any* vested rights," including the right of the State of Wisconsin to the fee to the school sections subject to occupancy, which attached on survey, and prevented any

other disposition thereof thereafter by allotment in severalty.

That such fee did actually vest in the state on survey, we think, has been demonstrated in fact and in law. The fee vested in the United States subject to occupancy under the treaty of 1842 and was in the United States at the time of the admission of the State of Wisconsin into the Union and was not sold or otherwise disposed of prior to survey. The creation of the reservation for a permanent home of the Indians was not a disposition thereof; the provisions in relation to allotment in severalty did not of themselves constitute a common trust, nor did they create any rights in the Indians as individuals which would amount to an actual disposition thereof; the President's power of allotment was a discretionary authority not exercisable prior to survey or at survey, but only exercisable after survey subject to vested rights; and in fact the President never attempted to exercise it as to sixteens until 1907, fifty-one years after the treaty, thirty years after the last section 16 was surveyed, and forty years after the first section 16 was surveyed.

In *Ham* v. *Missouri*, 18 How., 126 (1855), decided in the year following the one in which the treaty was made, it was stated with reference to the meaning of the school grant of the State of Missouri which was substantially the same as that of Wisconsin: "Sale, necessarily signifying a legal sale by a competent authority, is a disposition, final and irrevocable, of the land. The phrase 'or otherwise disposed of' must signify some disposition of the property equally efficient and equally incompatible with any right of the state present or potential." No such a disposition had been made at the time of survey and in the language of this court in the case of *Cooper* v. *Roberts*, 18 How., 173, "when the political authorities have performed this duty [survey] the compact

has an object, upon which it can attach, and if there is no legal impediment the title of the state becomes a legal title. The *jus ad rem* by the performance of that executive act becomes a *jus in re,* judicial in its nature and under the cognizance and protection of the judicial authorities, as well as the others." That is to say, on survey the claim and right of the state to the fee, subject to occupancy, vested *ipso facto.* No patent is necessary or is ever issued for the school sections. (*Gaines* v. *Nicholson,* 9 How., 356-365; *Callanan* v. *C. M. & St. P. R. Co.,* 10 L. D., 285; *Warren* v. *Colorado,* 14 L. D., 681.)

Minnesota v. *Hitchcock* is not an authority to the contrary. There survey was not made till after the agreement in the cession treaty and act of Congress, vesting the United States with title in the trust, which it was obligated positively and without discretion to administer by sale of the lands. None of them could have been donated by it to the state for school purposes. Cash had to be obtained for them at public vendue in the case of timber lands and by private sale on entry in case of agricultural lands. Thus as to the school grant lands of Minnesota included within the operation of this trust, they were, before survey, otherwise actually and finally disposed of to that exclusive purpose for the sole benefit of a definite Indian group. The disposition of the fee to the trust purpose was complete, absolute and exclusive in the Minnesota case, except as to initiated homestead and pre-emption rights, and the express inclusion of these is an exclusion of all others. In the instant case the reservation lands were subject to "any vested rights." *In the Mille Lac Chippewas case, involving the same Acts as the Minnesota case, the reservation of homestead and pre-emption rights was held to bind the Indians whatever they may have understood the Act to mean. In the instant case the broader but equally clear words "any*

vested rights" must likewise be held to bind them whatever they may have understood.

Nor does *United States* v. *Morrison* contain a contrary holding. The forest reservation there was made prior to survey and the withdrawal was positive, complete and exclusive in the following words: "for forestry purposes from *all* forms of disposition whatsoever, except under the mineral laws" and from "any use or purpose to which this reservation for forest uses is inconsistent." 34 Stat., 3270 (Morrison Case, 240 U. S., 192-197.) The single exception of mineral lands excluded an exception of school lands.

XIII.

Aside from the Express Reservation of Vested Rights in the Treaty of 1854, the Allotment Clauses Cannot Be Construed to Be a Withdrawal or Reservation of the Lands from the Operation of the School Grant, on the Theory That They Were Placed Under Executive Control for Allotment Purposes and Hence "Disposed of."

The treaty provisions relating to the executive discretion of allotment, although confined to the narrow limits of the reservations and to a narrow class of persons, are not dissimilar in their essential purpose from the provisions of the laws for dispositions of public lands under the *general* homestead and pre-emption laws, or under *special* laws, limited in application both as to territory and the class of beneficiaries, like those governing dispositions known as New Madrid Locations and Oregon Donations, or lands in abandoned military reservations. These laws do not in themselves dispose of lands, nor do they bring the lands to which they relate within the exception "sold or otherwise disposed of" contained in the school grant. They are enunciations of a govern-

mental purpose coupled with a power and a direction of the manner or mode of its execution, but some affirmative initiation of a right on the lands subject to those laws must have taken place prior to the settling down of the school grant and develop into title in order to defeat its operation.

An instructive decision on this subject is *In re Abandoned Military Reservation*, 29 L. D., 418. It appears that the school grant to the State of Utah was in substantially the usual form. The lands in question had been surveyed before admission of the State of Utah, but had not at the time of admission been sold or entered under the acts of 1884 and 1894, hereinafter mentioned, but by the terms of these acts they were *placed under the control of the Secretary of the Interior* for disposition in accordance therewith.

On July 5, 1884, Congress passed an act which directed that whenever "*in the opinion of the President*" any lands within any military reservation had or should becomes useless for military purposes, he should cause the same to be placed under the control of the Secretary of the Interior for disposition as therein provided, and authorized the Secretary of the Interior to cause such lands to be surveyed and appraised, and to be sold at public sale to the highest bidder for cash at not less than the appraised value thereof, nor less than $1.25 per acre. It also provided that if they could not all be so sold at public sale, then the remainder should be sold at private sale. It contained a provision for the benefit of certain settlers, whereby each settler was entitled to enter under the homestead laws the lands occupied by him, not exceeding 160 acres. On August 23, 1894, another act (28 Stat., 491) was passed giving preference of right of entry as to lands not theretofore disposed of to settlers on agricultural lands. *Both these acts were passed before the admission of the state in* 1896.

The State of Utah claimed Sections 16 and 36 in this military reservation. It was held that the state was entitled to the land because the acts of July 5, 1884, and August 23, 1894, directing the disposition of the lands, did not of themselves dispose of the lands, but rather prescribed what should guide and control the Land Department in its *future* disposition thereof, and construed the direction of Congress not to include the school lands to which the state was entitled.

The Secretary said (p. 419):

> "In the construction of the grants made to the several States for the support of common schools, it has been uniformly held that where, at the time of admission of the state the lands have been surveyed and the specific sections granted are thus identified, the right of the state attaches immediately, unless prior to that time the lands have been sold or otherwise disposed of by or under authority of an act of Congress. (*Ham* v. *Missouri*, 18 How., 126; *Cooper* v. *Roberts*, id., 173; *Beecher* v. *Wetherby*, 95 U. S., 517.) * * *
>
> *It is clear that unless the legislation relating to the lands in question in itself amounted to a disposition thereof the title of the State became complete when the state was admitted.* * * *
>
> The acts of July 5, 1884, and August 23, 1894, do not purport to make a disposition of the lands to which they apply, but rather to prescribe a method which shall guide and control the Land Department in the future disposition of such lands. The two acts present a combination of the features of the homestead law and the early law authorizing sales of the public lands; but the combination surely amounts to no more than would have resulted from opening the lands to sale or homestead. An entire new scheme might have been applied to these lands to the exclusion of all features of the old laws, but, in the absence of some uniform policy of Congress, amounting to an exception of a specific class of lands from the grant to the State, as in the instance of mineral lands (*Mining Co.* v. *Consolidated Mining Co.*, 102 U. S., 167), *no matter what the form*

of the authorized disposition or the conditions upon which it was to be allowed, if at the time of the admission of the State into the Union it remained a mere unexecuted provision for their future sale or disposition, they were not 'sold or otherwise disposed of by or under the authority of any act of Congress' within the meaning of the school grant and hence the title passed to the State and no subsequent proceeding in the Land Department could divest that title. There has been no uniform policy of Congress respecting the disposition of lands within abandoned military reservations and certainly none such as amounts to a specific exception of that class of lands from a grant to a State for school purposes such as is here under consideration.

The view here taken is in harmony with the construction placed upon the expression 'otherwise disposed of' as employed in the grants made to the several States for the support of common schools.

In the case of *Ham* v. *State of Missouri, supra,* in construing the school grant to the State of Missouri, which is practically the same as that found in the grant to the State of Utah, it is said:

'Sale, necessarily signifying a legal sale by a competent authority, is a disposition, final and irrevocable, of the land. The phrase 'or otherwise disposed of' must signify some disposition of the property equally efficient, and equally incompatible with any right in the State, present or potential, as deducible from the act of 1820, and the ordinance of the same year.'

A similar construction of the phrase 'otherwise disposed of' was made by the court in the case of *Cooper* v. *Roberts* (id., 173), involving a construction of a school grant to the State of Michigan. The construction thus made of this phrase has stood unchallenged as far as the Department is able to find."

The acts in question in the foregoing citation were, in form, as to the presidential powers, very similar to the allotment provisions of the treaty of 1854. The act of 1884 directed "whenever, *in the opinion of the Presi-*

dent, the lands, or any portion of them, included within any military reservation heretofore or hereafter declared, have become useless for military purposes, he shall cause the same *or so much thereof as he may designate,* to be placed under the control of the Secretary of the Interior for disposition as hereinafter provided." (23 Stat., 103.)

Thus the selection of the lands was upon discretion of the President. The duties of the secretary, however, were mandatory. He "shall" cause surveys to be made and "shall" sell, etc. In this respect the language of the acts is stronger than the treaty allotment provisions under which it was provided that the President "may" assign the lands in severalty and "may" issue patents. Nevertheless, it was held that the acts, though declaratory of a governmental method of disposing of public land, did not constitute of themselves such a disposition as to defeat the school grant which had vested on admission (the lands having been actually surveyed at that time) prior to any sales or entries under the act.

There has been a uniform policy of Congress, the courts and the land department in respect to disposition of Indian reservation lands under the school grant. The fee vests on survey subject to occupancy unless sold or otherwise disposed of; and on termination of occupancy fee and possession unite. Thus Indian reservation lands are not excepted from the grant any more than abandoned military reservation lands.

The case of *Abandoned Military Reservation-school-land-Act of June* 9, 1874 (30 L. D., 310) follows the preceding decision. In this case the school grant to Colorado was involved. By an act of Congress of June 19, 1874 (18 Stat., 85), it was provided that lands in the abandoned Fort Reynolds reservation be transferred to the control of the Secretary of the Interior, to be dis-

posed of for cash, after appraisement, to the highest bidder, in much the same way as provided in the acts of 1884 and 1894 in the case last cited.

The state was admitted in 1876. The lands in the reservation were surveyed in 1875 but *the survey was not approved till* 1880. In this case it thus appears the act of Congress was passed prior to admission of the state and the lands were not surveyed until after admission. In view of the act the state made selections in lieu of the sixteens in the abandoned reservation but these selections were canceled by the department upon the following opinion, holding that the selection was ineffective because title had vested in the specific school sections granted (p. 311):

> "By proclamation of the President, dated August 1, 1876, the State of Colorado was admitted into the Union, and thereupon the title of the State to the sections of the number granted became complete so far as identified by the government survey, within the limits of the former reservation, and as to those then unsurveyed, upon their identification by survey, unless the legislation contained in the act of June 19, 1874, providing the method in which the lands formerly within the Fort Reynolds military reservation should be disposed of, amounted to a sale or disposition of said lands.
>
> As thus presented the case is controlled by the decision of the Department in the case of State of Utah (29 L. D., 418), in which it was held that the acts of July 5, 1884 (23 Stat., 103), and August 23, 1894 (28 Stat., 491), providing the method in which lands in abandoned military reservations should be disposed of, did not in themselves amount to a disposition of said lands, and hence bring them within the exception of land 'sold or otherwise disposed of,' contained in the grant of school lands to the State of Utah.
>
> In the case under consideration it does not appear that the lands in place, in lieu of which the selections in question were made, have ever been disposed of by the United States.

Following the decision of this Department in the case of *Gregg et al.* v. *State of Colorado, supra,* an appraisement was made of the school sections in place formerly embraced within said military reservation, but they were never sold or otherwise disposed of. It is therefore held that said sections passed to the State under its school grant and the list submitted is herewith returned without approval, and you are directed to cancel said indemnity selections."

XIV.

The Deposited Moneys Are the Property of the J. S. Stearns Lumber Company, Being the Proceeds of Sale of Timber Belonging to the Fee Severed for Commercial Use Off the Premises.

In the years 1908 and 1909 several suits were begun in the Circuit Court of Ashland County by J. S. Stearns Lumber Company against the individual Indians claiming an interest in severalty in the sections 16 under the patents from the United States in issue herein, praying for a judgment removing the cloud of those patents from the title of J. S. Stearns Lumber Company to such lands. While these suits were pending a destructive fire swept the lands and it became necessary to cut the damaged and down timber. (Stip. Facts XXVIII, Rec., 28-29.) To that end, in the years 1909 and 1911, stipulations were entered into in those causes, with the approval of the Indian Department, whereby it was agreed that all the burned timber upon the land should be cut by the Lumber Company under the supervision of the superintendent in charge of the La Pointe Agency and that the value thereof, fixed in the stipulation, should be paid into court for the benefit of the party who should be finally entitled thereto. (Rec., 37-51.) In due course, pursuant to these stipulations, timber from certain of the lands to which

the Lumber Company claims title was cut to an agreed value with interest of $66,833.56. This sum was deposited and is still on deposit in various bonded banks, and there held, under the stipulations so entered into, "for the benefit of the party who shall be finally entitled thereto." (Rec., 72.)

In the suit at bar it was agreed that the several suits in Ashland County should be dismissed and the stipulations entered into therein should be considered as stipulations entered into in this cause between the parties hereto. (Stip. XXVIII, Rec., 28-29.) Separate stipulations for the dismissal of said suits were in due course executed (Rec., 69), and, since entry of the decree below these separate suits in Ashland County have actually been dismissed, leaving only this cause now pending.

The funds were deposited on account of burned timber, cut under the stipulations mentioned above, "for the purposes of preservation and conservation of the same," *i. e.*, of the *timber* itself (Rec., 37-51) not for Indian use upon the premises, or for clearing them, or for any other purpose incident to the Indians' right of hunting or occupancy. The lands here involved are timber lands (not agricultural lands) upon which there is still a large amount of white and Norway pine and other valuable woods, ripe for cutting and subject to the constant danger of fire and natural deterioration. The cutting heretofore made was not for the purpose of "improving the land or the better adapting it to convenient occupation." (*U. S.* v. *Cook*, 19 Wall., 591-595.) The cutting was in fact for preservation and conservation of the ultimate fee simple estate of the remainder owner, to whom the timber would have been lost if not cut; because neither the Indians, as a tribe, nor the individuals holding the invalid patents in severalty, nor the United States as their guardian, had any right to cut the timber,

the only right of the Indians or of the United States as their guardian, to the timber being for use or other enjoyment, incidental to the peculiar character of Indian occupancy, which has in some cases in this court been called temporary and precarious. There is no enforceable duty upon the Indians or upon the Government toward the fee owner, to preserve or conserve the timber, since allowing ripe timber to fall or decay is at most only permissive waste by the tenants, and the damage or sudden decay as a result of the fires or by natural causes is not occasioned by them.

The rule established in this court is that timber severed from lands subject to Indian occupancy is the property of the Indians only when the severance was for the purpose of improving or better adapting the land to convenient occupation; but if severed for any other purpose the timber, or its proceeds, is the property of the owner of the fee. (*U. S.* v. *Cook*, 19 Wall., 591-595, and cases cited, *supra*, p. 10.)

The advisability of cutting all the timber on these particular sixteens in the near future was brought to the attention of Congress by the Department of Indian Affairs, and since the commencement of this suit, Congress passed an Act (Section 25 of the Act of May 18, 1916, Indian Appropriation Bill) in direct reference to the lands here in controversy and the remaining timber thereon and to others in a similar situation on the reservations set aside under the treaty of 1854. This Act, following the principles of the stipulations entered into in this cause, authorizes the Secretary of the Interior, with the consent of the state or parties claiming title therefrom to sell the timber on such lands, provided that such action shall be without bias or prejudice to the rights or interests of the parties, and that the funds arising from the same shall be deposited in National banks bonded

for the safe keeping of Indian funds to be paid over, together with interest thereon, to the party or parties who shall finally be adjudged to be entitled thereto. Pursuant to this Act, consents of the claimants have been filed in the Indian Department, advertisement for bids has been published by the Department and the J. S. Stearns Lumber Company has been awarded the contract to cut all the timber on the sections here involved and deposit the agreed value thereof as provided in the Act. The funds deposited under the Act are of course not directly involved in this appeal.

It is common knowledge that burned timber and ripe timber must be cut or it will soon be lost. Yet no right to cut and sell to prevent waste rests with the Indians. Its usefulness to them, as timber constituting a part of the fee, is limited and short lived, whereas its conservation and preservation from the remainder owner's point of view is of the utmost importance, for timber from trees killed but not destroyed by fire loses little of its value, if cut within a reasonable time. The loss if not cut is, therefore, to the remainder owner. The title of the remainder owner was in dispute at the time of the cutting heretofore made, and hence the provision by stipulation that the funds arising therefrom (found by the decree below to be $66,833.56) should be deposited for the benefit of the party "who shall be finally entitled thereto."

The cutting was thus clearly a commercial cutting; its purpose was *sale* of timber, purely and simply, just as it is clearly under the Act of 1916 above referred to. Neither the stipulations in this case, nor the Act of Congress express or imply any purpose to clear and improve the land so as to better adapt it for Indian occupancy. On the contrary, the express purpose was to obtain for the parties finally entitled thereto its commercial value by sale. Such cutting and sale was the right of the

remainderman, not of the Indians, they "having only a right of occupancy in the lands, the presumption is against their authority to cut and sell timber." (*U. S. v. Cook*, 19 Wall., 591.) In that case the court said definitely, the timber there involved "was cut for sale and nothing else" and held that under such circumstances, when cut, the party entitled thereto was the United States, and that it became the property of the United States absolutely, discharged of any rights of the Indians therein. There the United States held the ultimate fee subject to Indian occupancy. Here the defendant has succeeded to the ultimate fee of the United States subject to similar Indian occupancy.

In the Cook case the timber was wrongfully severed by the Indians from general reservation lands, and sold; but, in that case and in the present case, the purpose of the severance was the same, "sale and nothing else" (*i, e.*, nothing incident to the privileges of Indian occupancy.) In the present case the severance was legitimate and rightful and consented to by the United States, representing the Indians, for the purpose of conservation and preservation thereof and the resulting funds were agreed to be held during this controversy and paid over to the person who should be finally entitled thereto.

In other words, the vesting of the right to cut the timber for sale only, a right which belonged solely to the remainder owner, was hastened by consent of all parties, for the economic and equitable reason that otherwise its value would have been lost completely and a damage to the remainder estate would have accrued against which there would have been no remedy.

By severance of timber from the lands the nature of the property is changed, but the title thereto remains in the owner of the fee and occupancy of the Indians therein was terminated. As long as the timber was

standing it was subject to the Indian use incidental to and as one of their usual privileges of tribal occupancy; but when cut, it became the property of the J. S. Stearns Lumber Company "absolutely, discharged of any rights of the Indians therein." (*U. S.* v. *Cook,* 19 Wall., 591-594.)

Thus, with reference to this severed timber and its proceeds we have here the exact situation found in *Beecher* v. *Wetherby,* where Indian occupancy had terminated at the time the logs were cut. The cutting here terminated the Indian privilege of occupancy, not to the whole of the lands from which the timber was cut, but to the timber severed and title thereto in fee and right to possession thereof united in the J. S. Stearns Lumber Company, the owner of the ultimate fee at the time the timber was cut. Hence, being entitled to the timber "absolutely, discharged of any rights of the Indians therein," the company is entitled to the funds arising from the sale thereof.

Conclusion.

We submit that the decree of the District Court (Rec., 77) which found and decreed as follows, should be affirmed:

1. The J. S. Stearns Lumber Company is entitled in fee simple to the lands in controversy, described in paragraph 1 of the decree, subject only to the right of the Chippewa Indians of Lake Superior to hunt on said lands, with the other usual privileges of occupancy;

2. The J. S. Stearns Lumber Company is likewise vested with fee simple title to the timber thereon, subject as aforesaid;

3. The Indian right to hunt and privilege of occupancy do not include the right or privilege to cut the timber for sale or market or other commercial use;

4. The J. S. Stearns Lumber Company during the continuance of said Indian right and privilege has no right to remove said timber except on consent of the United States for the Indians;

5. The funds amounting to $66,833.56 (and interest thereon allowed by depositaries) arising from the sale of timber cut from said lands under stipulations that the proceeds should be deposited for the benefit of the parties finally entitled thereto, should be paid over to J. S. Stearns Lumber Company;

6. The patents in severalty, dated December 16, 1907, purporting to convey fee title to the parts of the school lands in controversy described in paragraph 6 of the decree, are each invalid and of no effect;

7. The United States has no power to issue patents or make allotments in fee to the lands described in paragraph 1 of the decree; and had not on December 16, 1907, and has not now such title or right as is purported to be conveyed by said patents; and no Indian had on said date or has now the right of selection or allotment, or patent as to said lands; and

8. The equities are with the defendant and the bill dismissed for want of equity.

Respectfully submitted,

ARTHUR DYRENFORTH,

Solicitor for J. S. Stearns Lumber Company.

W. W. GURLEY,

Of Counsel.

APPENDIX.

DEPARTMENT OF THE INTERIOR,

Office of Indian Affairs.

WASHINGTON, Nov. 22, 1917.

I, E. B. Meritt, Assistant Commissioner of Indian Affairs, do hereby certify that the papers hereto attached are true copies of the originals as the same appear of record in this Office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and caused the seal of this Office to be affixed, on the day and year first above written.

E. B. MERITT,
Assistant Commissioner.

(SEAL)
J. M. W.

Refer in reply to this initial
L. La Pointe
L1408-1880.

(Office of Indian Affairs
Received Nov 19 1917
106214).

DEPARTMENT OF THE INTERIOR,

Office of Indian Affairs,

WASHINGTON, D. C., Nov. 30, 1880.

Honorable Commissioner of the General Land Office.

SIR: This office is in receipt of your letter of October 8th instant, in which you state that you are in receipt of a letter from J. H. Waggoner, Chief Clerk of the Department of Public Lands, State of Wisconsin, dated October 2d ultimo, in which he requests to be informed relative to the title to and possession of Section 16 in Township 46 North, Range 2 West and Townships 46 and 47 North of Range 3 West, State of Wisconsin, and you request in view of the fact that said Townships are within the La Pointe Indian Reservation, to be furnished with a statement as to the character of the title of said Indians to said lands, whether the fee thereto is in the Indian or simply the right of occupancy.

In reply I have to state that the Supreme Court of the United States, in the case of *Beecher* v. *Wetherby* (5th

Otto, p. 526), held that "there can hardly be a doubt that Congress intended to vest in the State (Wisconsin) the fee to Section 16 in every township, subject, it is true, as in all other cases of grants of public lands to the existing occupancy of the Indians so long as that occupancy should continue."

By the treaty of October 4th, 1842, (V. 11, Stat. 591), the Chippewas of the Mississippi and Lake Superior ceded to the United States a large tract of country in the (now) State of Wisconsin and Michigan, embracing within its limits the present La Pointe Indian Reservation. Article 2 of the said treaty provides as follows: "The Indians stipulate for the right of hunting on the ceded territory, with the other usual privileges of occupancy, until required to remove by the President of the United States, and the laws of the United States shall be continued in force, in respect to their trade and intercourse with the whites, until otherwise ordered by Congress."

It does not appear that the President ever found it necessary or practicable to remove certain bands of the Chippewas who continued to occupy the lands ceded by the treaty referred to, and when in 1854, the treaty was made establishing, with others, the La Pointe Indian Reservation, (Stats. 10, 1109) they still retained the right of occupancy guaranteed them by the treaty of 1842.

This being the fact, and applying the rules laid down by the Supreme Court, it would appear that the fee to the 16th Section referred to is in the State, subject to the right of occupancy of the Indians.

Very respectfully,

E. M. MARBLE,
Acting Commissioner.

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B
R. S. C.

DEPARTMENT OF THE INTERIOR

General Land Office,

WASHINGTON, D. C. December 3, 1917.

I hereby certify that the annexed copy from the record of a letter written by this office is a true and literal exemplification from the record thereof.

IN TESTIMONY WHEREOF I have hereunto subscribed my

name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

D. K. PARROTT
Acting Assistant Commissioner of the General Land Office.

(SEAL)

1880-64932

DEPARTMENT OF THE INTERIOR,
General Land Office,

Dec. 6th, 1880.

J. H. Waggoner, Esq.,
Dept. of Public Lands,
Madison, Wisconsin.

SIR:

Referring to your letter of October 2d last, and my partial reply thereto on the 8th of same month, I now inclose herewith, a copy of a letter received from the acting commissioner of Indian Affairs, dated the 30th ultimo, relative to the status of section 16 in township 46 N., of range 2 W., and townships 46 and 47 N. of range 3 W., state of Wisconsin, embraced in the La-Pointe Indian Reservation from which it will be seen that the title of the Indians to the lands embraced in said reservation is only that of occupancy and that the fee to the 16th section referred to is in the state, subject to the right of occupancy by the said Indians.

Very respectfully,

J. A. WILLIAMSON,
Commissioner.